U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 2 9 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that he is a person of good moral character. On appeal, we concurred with the director's determination that the petitioner had not demonstrated that he is a person of good moral character. Our previous decision is incorporated here by reference. The matter is before us on motion to reconsider. In support of the motion to reconsider, the petitioner submits a brief and additional evidence.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The Petitioner's Criminal Record

In our December 19, 2014 decision, we determined that the petitioner had not established that he is a person of good moral character because he has five convictions, including assault and unlawful detention involving domestic violence, and had not established that any of his offenses were committed under extenuating circumstances. On motion, the petitioner asserts that he has only four convictions because his conviction for unlawful detention involving domestic violence was dismissed. In our decision we stated that, although the petitioner's 2003 unlawful detention charge was dismissed in 2004, the record lacked any evidence that the charge was dismissed or expunged due to a legal defect in the underlying criminal proceedings and would no longer be recognized as a conviction for immigration purposes. *See Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). The petitioner on motion has not provided any evidence demonstrating a legal defect in the underlying criminal proceedings.

The petitioner further maintains that he is innocent of the unlawful detention involving domestic violence charge of which he was convicted on August 6, 2003. We cannot look behind the petitioner's conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence). The petitioner has not resolved the inconsistencies regarding his criminal record on motion and remains convicted of unlawful detention involving domestic violence for immigration purposes.

Good Moral Character

The petitioner contends that he demonstrated that he is a person of good moral character because the victim of his crimes, L-L-[1], had subjected him to battery or extreme cruelty during their marriage, his criminal history is "remote" and of a "non-serious nature," he has not engaged in any criminal activity since 2006, and, equally important, his convictions and conduct do not fall within the provisions of section 101(f) of the Act.

The fact that the petitioner's convictions or conduct do not fall under any of the specific provisions of section 101(f) of the Act do not preclude a finding that the petitioner lacks good moral character for other reasons. Section 101(f) of the Act provides that "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." A petitioner will be found to lack good moral character, unless he establishes extenuating circumstances, if he committed unlawful acts that adversely reflect upon his moral, or was convicted or imprisioned for such acts, although the acts do not require an automatic finding of lack of good moral character. 8 C.F.R. § 204.2(c)(1)(vii). A petitioner's claim of good moral character will be evaluated taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. *Id.* Primary evidence of good moral character is the petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner provided inconsistent accounts of his two convictions involving domestic violence and his conviction for disorderly conduct, and does not explain the crimes on motion. The "Affidavit of Support of Person of Good Moral Character" contained in the record does not indicate that the 21 friends and acquaintances who signed the document are aware of the petitioner's criminal history. The record contains evidence, including the decree of divorce on motion, that L-L- subjected the petitioner and his children to battery and extreme cruelty during their marriage. However, the record does not contain any evidence, and the petitioner has not provided any evidence on motion, demonstrating that the petitioner's offenses were committed under extenuating circumstances.

The petitioner argues that his convictions do not render him ineligible because the convictions occurred more than three years prior to the filing of the instant petition. The statute does not state a period in which the petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(bb). The regulation requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, but the regulation does not limit the temporal scope of USCIS' inquiry into the petitioner's character. *See* 8 C.F.R. § 204.2(c)(2)(v). As noted by the petitioner, USCIS may investigate the petitioner's character beyond the three-year period when there is reason to believe that the petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). In this case, the record contained evidence of the petitioner's convictions in 2004 and 2005 involving domestic violence, providing sufficient reason to believe

[1] Name withheld to protect the individual's identity.

that the petitioner lacked good moral character. The petitioner was convicted of unlawful acts which adversely reflect upon his moral character and the preponderance of the evidence does not establish his good moral character under section 101(f) of the Act. Consequently, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende,* 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). He has not met his burden and the motion will be denied.

ORDER: The motion is denied. The AAO's December 19, 2014 decision is affirmed and the appeal remains dismissed.