



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 24 2015** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

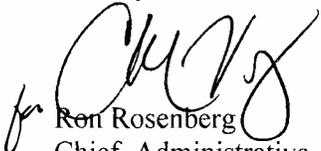
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was a person of good moral character.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or

imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

...

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner’s good moral character is the self-petitioner’s affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner’s good moral character.

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, represents that he entered the United States with a border crossing card as a nonimmigrant visitor in approximately December 2007. The petitioner divorced his first wife on [REDACTED] 2011, and married T-C-¹, a U.S. citizen, on [REDACTED] 2011, in Colorado. On [REDACTED] 2012, the petitioner was arrested for a domestic dispute with his wife, and

¹ Name withheld to protect the individual's identity.

on [REDACTED] 2012, was found guilty of disturbing the peace in violation [REDACTED] Municipal Code section 38-89 in connection with that incident, and was sentenced to a year of probation. On June 19, 2012, the petitioner was issued a Notice To Appear (NTA) and placed in removal proceedings for failure to comply with the terms of his nonimmigrant status. Those proceedings are ongoing.

On [REDACTED] 2012, while the petitioner was on probation, he was arrested for another domestic incident involving his wife, and was charged with harassment and assault. He was placed into custody of the [REDACTED] on [REDACTED] 2012. The petitioner ultimately pled guilty on [REDACTED] 2013, to harassment for using obscenity in a public place in violation of section 18-9-111(1)(b) of the Colorado Revised Statutes. The court sentenced the petitioner to 90 days in jail. The court also revoked the petitioner's probation from his prior offense, and imposed a 90 day jail sentence for the first conviction. Shortly after the second incident, on [REDACTED] 2012, the petitioner was involved in a third domestic incident with his wife. On [REDACTED], 2013, the petitioner pled guilty to disturbance of the peace in violation of [REDACTED] Municipal Code section 38-89, and was sentenced to a consecutive jail sentence of 180 days. The petitioner was released from incarceration on [REDACTED] 2013, 201 days after he was initially confined to the [REDACTED].

The petitioner filed the instant Form I-360 self-petition on August 26, 2013. The director subsequently issued a Notice of Intent to Deny (NOID) the petition finding that the petitioner's convictions precluded him from establishing his good moral character. The director found the petitioner's response to the NOID insufficient to establish his good moral character and denied the petition.

On appeal, counsel submits a brief and additional evidence. *De novo* review of the record, as supplemented on appeal, does not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Section 101(f)(7) of the Act

Section 101(f)(7) of the Act bars a finding of an alien's good moral character if the alien was confined to a penal institution for an aggregate period of 180 days or more resulting from a conviction. In response to the NOID, the petitioner argued that section 101(f)(7) did not apply to him because only 104 days elapsed from the date of his initial sentencing on [REDACTED] 2013 until his release on [REDACTED] 2013. In his decision, the director correctly determined that the petitioner's confinement in the [REDACTED] prior to his sentencing counts toward the length of his confinement under section 101(f)(7) of the Act. *See Garcia-Mendoza v. Holder*, 753 F.3d 1165, 1169-71 (10th Cir. 2014) (holding that section 101(f)(7) of the Act refers to an actual period of confinement, and deferring to the Board of Immigration Appeals' determination that pretrial confinement credited as time served counts toward the 180-day period of section 101(f)(7) of the Act); *see also* COLO.REV.STAT. § 18-1.3-405 (requiring that pretrial confinement be credited as time served). The director found that the petitioner's 201 days of confinement barred the petitioner from establishing his good moral character under section 101(f)(7) of the Act.

On appeal, the petitioner concedes that he is subject to section 101(f)(7) of the Act but asserts that because the act of being confined for 180 days or more does not render him inadmissible or

deportable, a waiver of inadmissibility or deportability is unnecessary and he is therefore not barred from establishing his good moral character. However, the petitioner also argues that his convictions are directly related to T-C-'s abusive treatment of him and that he nonetheless qualifies for an exception to section 101(f) of the Act pursuant to a memorandum of William R. Yates, Associate Director of Operations, USCIS entitled *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, issued on January 19, 2005 ('Yates Memo').

The Yates Memo addresses the application of section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), which states, in pertinent part:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii) . . . if the [Secretary of Homeland Security] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

For the provisions of section 204(a)(1)(C) of the Act to apply to a VAWA self-petitioner, the statute requires that the act or conviction barring the self-petitioner from establishing good moral character under section 101(f) of the Act be "waivable" under section 212(a) or 237(a) of the Act, *and* "connected to the alien's having been battered or subjected to extreme cruelty." In accordance with the Yates Memo, the conduct described at section 101(f)(7) of the Act may not be waived. Here, the petitioner was confined to a penal institution for an aggregate period of 180 days or more resulting from a conviction, and is therefore barred from establishing his good moral character pursuant to section 101(f)(7) of the Act and as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. As the petitioner's 201-day confinement precludes him from establishing his good moral character and is not "waivable," we do not reach the issue of whether his confinement was "connected" to the abuse. Consequently the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

The petitioner bears the burden of proof to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.