



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: 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:

NO REPRESENTATIVE OF RECORD

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 Acting Director, Vermont Service Center, (the director) revoked approval of the immigrant visa petition after properly notifying the petitioner. 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 United States citizen spouse.

The director revoked approval of the petition on the basis of her determination that the petitioner failed to establish that he is a person of good moral character. On appeal, the petitioner submits two personal statements.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

Section 204(a)(1)(A)(iii)(I) of the Act provides 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

In addition, 8 C.F.R. § 204.2(c)(1)(iv) requires that a self-petitioner comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.”

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.

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

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 –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2) of the Act. . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period

* * *

The 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. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. section 1182(a)(2)(A)(i)(I) includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

Pertinent Facts and Procedural History

The petitioner, a citizen of Senegal, married S-B¹, a citizen of the United States, on [REDACTED], 2008, in Illinois. They were divorced on [REDACTED] 2011. He filed the instant Form I-360 self-petition on May 25, 2010, and it was approved on April 5, 2011. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on March 25, 2013, and notified the petitioner that his petition may have been granted in error. The director stated that after a full review of the administrative record, the petitioner had failed to establish the eligibility requirement regarding good moral character. The petitioner submitted a timely response which the director found insufficient to overcome the proposed ground for revocation. The director revoked approval of the petition on March 31, 2014.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director’s sole ground for revocation. Beyond the director’s decision, the petitioner entered a prior marriage to evade the immigration laws and section 204(c) of the Act consequently barred approval of his self-petition.² The appeal will be dismissed and approval of the petition will remain revoked for the following reasons.

Good Moral Character

We find no error in the director’s determination that the petitioner failed to establish his good moral character. The record shows that on [REDACTED] 2010, the petitioner pled guilty and was convicted of two counts of domestic battery in violation of 720 Illinois Compiled Statutes (ILCS), section 5/12-3.2(A)(1). Under 720 ILCS section 5/2-3.1(A)(1), a person commits domestic battery if he or she

¹ Name withheld to protect the individual’s identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003).

intentionally or knowingly without legal justification by any means causes bodily harm to any family or household member. As the statute requires that the actor intentionally or knowingly cause bodily harm to a family member, a conviction under 720 ILCS § 5/2-3.1(A)(1) is categorically a crime involving moral turpitude. In addition, the Seventh Circuit Court of Appeals has held that “the elements of 720 ILCS § 5/2-3.1(A)(1) establish that it is a crime of violence.” *LaGuerre v. Mukasey*, 526 F.3d 1037, 1039 (7th Cir. 2008). *See also United States v. Upton*, 512 F.3d 394, 405 (7th Cir.2008). The petitioner was sentenced to a one-year conditional discharge for his conviction with several conditions imposed, including that he have no contact with his two victims, S-B- (his then-wife), and B-B-³ (S-B-’s daughter). The record further shows that S-B- and B-B- were granted an order of protection against the petitioner on January 7, 2010 which was extended for one year on March 15, 2010. The order was dismissed on March 14, 2011, following the petitioner’s completion of the terms of his conditional discharge.

On appeal, the petitioner submits two personal statements asserting that with regards to the January 7, 2010 incident, he fought with S-B- and her family but “did not do anything to them.” He claims that he called the police but the police arrested and charged him instead. According to the petitioner, he “got arrested because they lie to the police by telling them I was abusing them, beating them. Police arrested me and put anything they want to put on their report. There were no injuries on them.” The protective order, however, indicates that the petitioner struck S-B- about the right side of her face, causing a swollen and bruised eye, and he struck B-B- about the left side of her face, causing a swollen eye. The petitioner concedes that he pled guilty to both domestic battery charges, but blames his lawyer whom he claims told him to plead guilty because he had no witnesses. Inasmuch as the petitioner avers his lack of culpability, we cannot look behind his 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); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974) (same). The petitioner asserted in his earlier statement, dated April 17, 2013, that he filed a bar complaint against his criminal lawyer, “[REDACTED]” The petitioner has not submitted a copy of the alleged complaint. Regardless of the outcome before the [REDACTED] Bar Association, the petitioner remains convicted of two counts of domestic battery.

The petitioner further asserts that although he was “arrested and charged,” he did not go to jail. This statement is inconsistent with the petitioner’s earlier affidavit, dated November 26, 2010, in which he stated that he was “locked up” in jail for two days before seeing the judge. The petitioner claims that when he explained to the judge that his lawyer pushed him to plead guilty though he committed no crime, the judge understood and told him to “go do ten days of community service and it’s over.” The Certified Statement of Conviction/Disposition indicates that on [REDACTED] 2010, the court ordered a 10-day continuance (“10 days swap in lieu of DVC for completion of swap”), on [REDACTED], 2010, the terms of the petitioner’s conditional discharge were satisfactorily terminated, and on [REDACTED] 2011, the order of protection against him was dismissed. Thus, while the petitioner may have provided 10 days of community service toward the end of his one-year

³ Name withheld to protect the individual’s identity.

sentence, the actual sentence for his domestic battery conviction under 720 ILCS § 5/2-3.1(A)(1), was a one-year conditional discharge, the entirety during which he was under an order of protection barring him from having any contact with his two victims.

On appeal, the petitioner has not overcome the director's sole ground for revocation. The petitioner's conviction for a crime involving moral turpitude bars a finding of his good moral character under section 101(f)(3) of the Act. Moreover, even if his conviction under 720 ILCS § 5/2-3.1(A)(1) were not a crime involving moral turpitude, the petitioner has been convicted of unlawful acts which adversely reflect upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Section 204(c) of the Act

Beyond the director's decision, the record shows that the petitioner entered a prior marriage to evade the immigration laws and section 204(c) of the Act consequently barred approval of his self-petition.

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

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the self-petitioner. *Id.* However, the adjudicator must come to his or her own, independent

conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record shows that the petitioner married A-M-⁴, a U.S. citizen, on January 9, 2002 in Illinois. A-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on March 12, 2002. On December 28, 2005, the District Director, [REDACTED], Illinois (district director), denied the petition finding that the marriage between A-M- and the petitioner was entered into for the sole purpose of evading the immigration laws of the United States. We find no error in the district director's determination. The petitioner married S-B- on [REDACTED] 2008, and on November 28, 2008, S-B- filed a subsequent Form I-130 petition on his behalf. On November 25, 2009, the Field Office Director, [REDACTED] Illinois (field office director), issued a Notice of Intent to Deny (NOID), notifying S-B- of his intent to deny the petition because the petitioner's prior marriage to A-M- had been entered into solely for evading the immigration laws and section 204(c) of the Act consequently barred approval of the subsequent petition by S-B-. Although S-B- ultimately withdrew her petition and it was denied on December 21, 2009 on the basis of that withdrawal, the petitioner remains subject to section 204(c) of the Act which bars the approval of any subsequent visa petition as a result of his fraudulent marriage to A-M-. Consequently, the petitioner is subject to the bar to approval of his self-petition under section 204(c) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's sole ground for revocation. The petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Beyond the director's decision, approval of this self-petition was and is barred by section 204(c) of the Act because the record demonstrates that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. The petitioner has failed to demonstrate that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(c) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition should be revoked on this ground as well.

In these proceedings, 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). Here, that burden has not been met and the director had good and sufficient cause to revoke approval of the petition. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The appeal is dismissed.

⁴ Name withheld to protect the individual's identity.