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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date:

MAY 26 2015

[Redacted]

IN RE:

Self-Petitioner:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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

On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act allows the spouse of a lawful permanent resident of the United States to self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(cc).

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. . . . 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explained 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 is a citizen of Mexico who claims to have last entered the United States at Nogales, Arizona in 1996 without inspection, admission or parole. The petitioner married E-G-,¹ an alleged lawful permanent resident,² on [REDACTED] in Illinois, and the marriage terminated in divorce on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on October 17, 2013.³ The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner timely responded with evidence which the director

¹ Name withheld to protect the individual's identity.

² United States Citizenship and Immigration Services (USCIS) records do not reflect that E-G- is a lawful permanent resident based on identifying information presented by the petitioner.

³ The petitioner was placed into removal proceedings on January 25, 2013, and filed a Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. We will consider all relevant evidence in the administrative record.

found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

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 denial. The appeal will be dismissed for the following reasons.

The Petitioner's Criminal Record

On March 12, 2012, the Iowa District Court, ██████████ County, Iowa, convicted the petitioner, pursuant to his guilty plea, of Operating Under the Influence (OWI), 1st Offense, in violation of IOWA CODE § 321J.2(2)(A) (2011), a "serious misdemeanor" offense, and sentenced him to a fine of \$1250, substance abuse evaluation and treatment, drunk driving school and two days imprisonment. On March 21, 2013, the court found the petitioner in contempt of court for failure to comply with the terms and conditions ordered previously, pursuant to the provisions of IOWA CODE § 665.2 (1972), and sentenced the petitioner to imprisonment for a period of 14 days and a substance abuse evaluation (Docket Number OWCR 095717).

On March 12, 2012, the Iowa District Court, ██████████ County, Iowa, convicted the petitioner under a deferred judgment, pursuant to his guilty plea, of simple possession, first offense, of a controlled substance, Schedule II, cocaine, in violation of IOWA CODE § 124.401(5) (2012). The court sentenced the petitioner to a civil penalty of \$315.00, substance abuse evaluation and treatment, and one year of unsupervised probation. On March 15, 2013, the court vacated and set aside the conviction due to ineffective assistance of counsel under the sixth and fourteenth amendments to the U.S. constitution, and recalled the warrant for arrest. A conviction vacated due to a constitutional defect is no longer a valid conviction for immigration purposes. *See, Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000) (noting that we give full faith and credit to state court actions that vacate an alien's criminal conviction) (Docket Number ██████████). We will not consider this criminal proceeding in reaching a decision.

On January 24, 2013, the Circuit Court of the 14th Judicial District, Criminal Division, County of ██████████ Illinois, convicted the petitioner, pursuant to his guilty plea, of attempted [possession or display of] fictitious or unlawfully altered identification card (lesser included), in violation of 15 ILL. COMP. STAT. § 335.0/14A-B-1 (2011) a Class A misdemeanor, and sentenced him to a term of 180 days imprisonment, with credit for time served, and a conditional discharge after 12 months (Docket Number ██████████). A conviction that is vacated or expunged for rehabilitative reasons or to avoid adverse immigration consequences still qualifies as a conviction for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999); *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), rev'd on other grounds, *Matter of Pickering* 454 F.3d 525 (6th Cir. 2006).

Good Moral Character

The relevant evidence before the director included, in part, the petitioner's criminal arrest record, incomplete court dispositions, two affidavits from the petitioner, and a letter from the City of ██████████ in response to a Freedom of Information Act (FOIA) request from the petitioner. The

petitioner's affidavits indicated that he used a false identification card and social security number in order to work. The FOIA response related solely to one unspecified incident and was not a report of the petitioner's criminal record. The director found that the petitioner had not established his good moral character, because the petitioner failed to submit court dispositions of all of the criminal charges against him, and failed to submit a police clearance as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). On appeal, the petitioner submits court dispositions for all arrests reported in the record, adequately addressing this particular evidentiary deficiency raised by the director.

The petitioner has not, however, provided police clearances as required by the regulation.⁴ On appeal, the petitioner submits an updated FOIA response stating that "[w]ith the information provided the City of [REDACTED] has no criminal record for [REDACTED]" The record does not indicate what identifying information the petitioner submitted with the FOIA request, such as all names, birth dates and aliases ever used.⁵ As the record indicates that the petitioner has a criminal record in both [REDACTED] County, Illinois and [REDACTED] County, Iowa, the police clearance from the [REDACTED] City Police Department is insufficient and does not satisfy the requirement under 8 C.F.R. § 204.2(c)(2)(v) that the petitioner submit a "local police clearance or a state-issued criminal background check." As such, the petitioner has not adequately responded to the director's concern and the regulatory requirement.

On appeal, the petitioner submits a third affidavit in which he states that he was unaware that the social security number he used belonged to a real person, and that he did not intend to steal another person's identity for monetary gain, but needed a social security number to able to work, to continue in school, and to open a bank account. He states in his brief that his convictions all arose out of a single occurrence on September 24, 2011.⁶ He explains that although he does not use drugs, an acquaintance put a bag of cocaine in his pocket, and later that evening his car was struck by another person. He recounts that when the police arrived on the scene, they arrested him for operating a vehicle while intoxicated, possession of cocaine, identity theft, false application to obtain an identity card, and fictitious or altered identity card. The petitioner indicates that the charges relating to presenting a false identification were delayed until he was already on probation for the OWI charge, and that after his conviction for [possessing or displaying] a fictitious or altered identity card, he was then charged and convicted of contempt for violating his OWI probation. He states that he regrets making mistakes and putting his father through so much agony.

The petitioner submits letters from his father, landlord, friend, and a report from a clinical psychologist. The petitioner's father, [REDACTED] states that his son is a good person, does not have a substance abuse problem, and is respectful of others. The petitioner's landlord, [REDACTED]

⁴ The petitioner has three criminal convictions which have not been reported in a criminal background check from [REDACTED] County, Illinois and [REDACTED] County, Iowa.

⁵ The record indicates that the petitioner obtained an identity card using the social security number and name of D-V- (name withheld to protect the individual's identity).

⁶ The record does not clearly indicate that the identity card charge prosecuted in Illinois relates to the arrest in Iowa. The petitioner was arrested in Iowa on September 24, 2011 and convicted in Iowa for OWI. The Iowa court later convicted the petitioner of violation of probation for the offense of possession or use of an altered identification card for an offense occurring in Illinois. The charging documents for the Illinois conviction indicate that the offense occurred in Illinois on October 23, 2012.

█ states that he has known the petitioner for 16 years, and the petitioner has never been involved in gangs, drugs, or in other trouble. Neither █ nor █ indicates that he considered any of the petitioner's convictions before attesting to his good moral character. The petitioner's friend, █ states that the petitioner is a good person and a great friend with high morals and values. █ clinical psychologist, states that she evaluated the petitioner for good moral character, and reported that the petitioner excelled academically, finished three years of college, was a member of a church, and had no felony convictions, delinquency or substance abuse issues. As the record does not contain police clearances, nor an explanation for why such clearances have not been submitted, the letters attesting to the petitioner's good moral character are insufficient to overcome the director's finding that the petitioner lacks good moral character.

The petitioner additionally lacks good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in pertinent part, 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." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that:

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. . . .

The record reflects that the petitioner has been convicted of multiple offenses since 2012 including first offense OWI, Contempt of Court, and attempted [possession or display of] a fictitious or unlawful identity card. The petitioner indicates that he was the only child in a poor family, was abandoned by his mother, raised by his father, and could not work when he graduated from high school because he did not have state identification or a social security number. He states that he attended university with the small savings of his father, and had to work to pay back his father and to support his new wife. He found that the only way that he could work was to obtain a false identification, and that he meant no harm to others. Although he states that the OWI and false identification charges arose out of a single occurrence, the record does not support the petitioner's assertions. █ states that the petitioner was arrested only once and completed all recommendations successfully for his OWI arrest, although she does not indicate any knowledge of the convictions for violation of probation and false identity. While the petitioner expresses remorse for his mistakes, without a complete police record we cannot determine the extent of the petitioner's culpability. Based on the current record, the petitioner's recent convictions demonstrate conduct that falls below the average citizen in the community and he has committed unlawful acts which adversely reflect upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner therefore fails to demonstrate his good moral character as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

In summary, the petitioner failed to submit evidence of good moral character, e.g., police clearances from [REDACTED] Iowa and [REDACTED] County, Illinois, as required by 8 C.F.R. § 204.2(c)(2)(v). The petitioner's multiple convictions also demonstrate a lack of good moral character under the last paragraph of section (101)(f) of the Act. Consequently, the petitioner has not established his good moral character as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Qualifying Relationship

Beyond the decision of the director, the record does not establish that the petitioner was married to a lawful permanent resident of the United States. The record does not contain evidence of the petitioner's former spouse's lawful permanent resident status.⁷ The petitioner has not established that he had a qualifying relationship with a lawful permanent resident and his corresponding eligibility for immigrant classification based upon that relationship as required by section 204(a)(1)(B)(ii)(II) of the Act.

Conclusion

On appeal, the petitioner has not established that he is a person of good moral character. Beyond the decision of the director, the petitioner has not established that he had a qualifying relationship with a lawful permanent resident and his corresponding eligibility for immigrant classification based upon that relationship. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.

⁷ United States Citizenship and Immigration Services (USCIS) records do not reflect that E-G- is a lawful permanent resident based on identifying information presented by the petitioner.