



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-C-D-L-C-

DATE: NOV. 2, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL
IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen and the motion to reconsider will be denied.

I. APPLICABLE LAW

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.

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

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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 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 evidentiary guidelines 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

II. PERTINENT FACTS AND PROCEDURAL HISOTRY

The Petitioner is a citizen of Mexico who claims to have last entered the United States without admission, inspection or parole in September 1995. He married R-C-¹, a U.S. citizen, on [REDACTED] 2004, in Colorado. The Petitioner filed the instant Form I-360 on January 7, 2011. The Director issued two requests for evidence (RFE) and a Notice of Intent to Deny (NOID) the petition on the basis that the Petitioner had not established, among other things, his joint residence with his wife, his good faith marital intentions, and his good moral character. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Consequently, the Director

¹ Name is withheld to protect the individual's identity.

denied the petition, and the Petitioner timely appealed. On appeal, we withdrew the Director's decision in part, concluding that the Petitioner had demonstrated his good faith marital intentions and his joint residence with his spouse, but ultimately, we dismissed the appeal because the Petitioner had not established his good moral character. The Petitioner thereafter filed the instant motion to reopen and motion to reconsider. On June 24, 2015, we issued a RFE to demonstrate the Petitioner's good moral character, as a public records search revealed that the Petitioner had been arrested and convicted again on new charges, and had subsequently violated his probation prior to the issuance of our appellate decision in this matter and before the Petitioner filed the instant motion. The Petitioner's motion did not discuss the Petitioner's most recent arrests.

The Petitioner has timely filed a motion to reopen and a motion to reconsider. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the petitioner submits a brief, updated personal declarations, and additional documentary evidence. We review these matters on a *de novo* basis. A full review of the record, including the new evidence submitted on motion, does not establish the Petitioner's eligibility, as he has not demonstrated his good moral character as required. Consequently, the motion will be denied for the following reasons.

III. ANALYSIS

A. Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) 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. . . .

In our prior decision, we determined that the Petitioner had not demonstrated his good moral character because his unlawful acts adversely reflected on his moral character and he had not shown by a preponderance of the evidence that he had rehabilitated. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of a petitioner's good moral character is his or her affidavit supported by local police clearances or state criminal background checks for every residence over six months during the three years preceding the filing of the petition. At the time the Director denied the petition, the

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record disclosed that the Petitioner had a number of arrests, resulting in three convictions. This includes: a Colorado conviction for driving under the influence of alcohol (DUI) resulting from an arrest on [REDACTED] 2005²; a [REDACTED] 2005, conviction for driving without insurance for which he was resented to 30 days after he violated his mandatory community service; and a [REDACTED] 2011, conviction for domestic violence conduct – unreasonable noise for which he was sentenced to 364 days of unsupervised probation.

The Petitioner subsequently filed the instant motion to reopen and motion to reconsider on October 28, 2014. On June 24, 2015, we issued a RFE to demonstrate the Petitioner's good moral character, as a public records search revealed that the Petitioner had been arrested and convicted again on new charges, and had subsequently violated his probation prior to the issuance of our appellate decision in this matter and before the Petitioner filed the instant motion. The Petitioner responded to the RFE with additional evidence, which shows that during the pendency of his appeal of the denial of his Form I-360, the Petitioner was again arrested on [REDACTED] 2013, for driving while under the influence and was ultimately convicted of a second DUI offense in violation of sections 42-4-1301(1)(a) and 42-4-1307(5) of the Colorado Revised Statutes on [REDACTED] 2013. He was sentenced to 63 days imprisonment (three days credit and 60 days served as in home detention), two years of supervised probation, 52 hours of community service, and 60 days electronic monitoring (alcohol bracelet). The record further discloses that the Petitioner was initially charged with violating his probation when he was arrested on or about [REDACTED] 2015, for assault and disturbing the peace, stemming from allegations made by his spouse, R-C-, but which were dismissed on [REDACTED] 2015. The record indicates that though the Petitioner has now complied with all the requirements of his probation for his 2013 DUI conviction, his two year probation term will not terminate until [REDACTED] 2015.

In response to our RFE, the Petitioner contends that he is a person of good moral character, notwithstanding his two most recent arrests. The Petitioner asserts that we should consider his residence in the United States for over 20 years, his gainful employment in the United States, his family ties to his U.S. citizen stepchildren, and that he has been subjected to battery and extreme cruelty by R-C-. His updated declaration in response to our RFE details how he had avoided alcohol since 2007, but succumbed on [REDACTED] 2013, because he was feeling depressed and in pain after his father's death a month earlier on [REDACTED] 2013, in Mexico. The Petitioner expresses remorse and notes that he has successfully completed all the requirements of probation following his 2013 conviction for DUI. He also sets forth in detail the circumstances of his 2015 arrest for assault, which he asserts stemmed from false charges by his spouse, R-C-. The Petitioner provided evidence to demonstrate that the charges against him were dismissed.

The Petitioner maintains that he did not intentionally fail to disclose his arrests to the AAO on his motion, but rather, had focused on his 2011 conviction because that had been the basis of our dismissal of his appeal. He asserts that he has demonstrated remorse and rehabilitation for his

² Although the Director's RFE and NOID, and our June 2015 RFE, requested that the Petitioner submit arrest reports and final dispositions for each of his arrests, none have been submitted as to the Petitioner's 2005 DUI arrest and conviction. However, the Petitioner concedes that his 2005 arrest resulted in his first DUI conviction.

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actions. However, as noted, the Petitioner failed to initially disclose his [REDACTED], 2013, conviction on his motion to reopen and motion to reconsider our decision to dismiss his appeal. He instead asserted that since his 2010 arrest he “maintained a clean record and has not been arrested thereafter.” The Petitioner only submitted evidence of his 2013 DUI conviction after we issued an RFE. Because the record indicates that the Petitioner presently remains on probation, his behavior falls below the standards of the average citizen in the community. He is therefore unable to establish his good moral character under the final paragraph of section 101(f) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

IV. CONCLUSION

On motion, the Petitioner has not overcome the Director’s remaining ground for denial, as he has not established his good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proof to establish 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.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-C-D-L-C-*, ID# 11872 (AAO Nov. 2, 2015)