



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

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

MATTER OF I-R-H-M-

DATE: NOV. 10, 2015

APPEAL OF VERMONT SERVICE CENTER 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. The matter is now before us on appeal. The appeal will be dismissed.

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 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)(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 person who was subjected to abuse in the form of forced

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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.

Section 101(f) of the Act 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 this 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 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.”

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Honduras, claims to have last entered the United States in October 1996, without admission, inspection or parole. He was placed into removal proceedings before an immigration court pursuant to a Notice to Appear issued on July 11, 2012. An immigration judge ordered the Petitioner removed from the United States on June 26, 2014, and the Board of Immigration Appeals (Board) subsequently dismissed his appeal on November 19, 2014.

The Petitioner married M-M-¹, a U.S. citizen, on [REDACTED] 2010, in [REDACTED] Nevada. The Petitioner filed the instant Form I-360 on May 12, 2014, based on his relationship with M-M-. The

¹ Name withheld to protect the individual's identity.

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Director subsequently issued a request for evidence (RFE) establishing, among other things, the Petitioner's good moral character. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition on the basis that the Petitioner had not established that he is a person of good moral character. The Petitioner timely appealed. On appeal, the Petitioner submits a brief and additional evidence.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

A. Good Moral Character

1. The Petitioner's Criminal History

The record indicates that on [REDACTED] 2010, the Petitioner was convicted of Discharging a Weapon Where Person Might Be Endangered, a gross misdemeanor, in violation of section 202.290 of the Nevada Revised Statutes, and originally received a 12-month suspended sentence and three years of probation. The Petitioner was discharged from probation on September 20, 2012. On February 6, 2013, his sentence was modified upon his request to 364 days and a period of probation not to exceed two years.

On [REDACTED] 2011, the Petitioner was convicted of Disorderly Conduct in violation of section 8.04.010 of the [REDACTED] Nevada Municipal Code and was sentenced to 62 days imprisonment, of which he received 32 days credit and the remaining 30 days were conditionally suspended.

2. The Petitioner's Conviction is Not a Crime Involving Moral Turpitude

Section 101(f)(3) of the Act prescribes, in pertinent part, that no person shall be found to have good moral character if he or she is a member of one or more of the classes of persons, whether inadmissible or not, described in section 212(a)(2)(A) of the Act, as having been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.

Upon a *de novo* review, the record does not support the Director's determination that the Petitioner's conviction for Discharging a Weapon Where Person Might Be Endangered under Nev. Rev. Stat. § 202.290 constitutes a crime involving moral turpitude, automatically barring a finding of his good moral character under section 101(f)(3) of the Act.

At the time of the Petitioner's arrest and conviction in 2010 for Discharging a Weapon Where Person Might Be Endangered, the corresponding statute provided:

Aiming firearm at human being; discharging weapon where person might be endangered; penalty-

Unless a greater penalty is provided in NRS 202.287, a person who willfully:

1. Aims any gun, pistol, revolver or other firearm, whether loaded or not, at or toward any human being; or
2. Discharges any firearm, air gun or other weapon, or throws any deadly missile in a public place or in any place where any person might be endangered thereby, although an injury does not result,

is guilty of a gross misdemeanor.

Nev. Rev. Stat. § 202.290 (2010).

The Board of Immigration Appeals (Board) has observed moral turpitudinous as a nebulous concept generally referring to conduct that “shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-618 (BIA 1992); *See Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994) (“Among the tests to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind.”). Specifically, a crime involving moral turpitude must involve both reprehensible conduct and a culpable mental state. *Matter of Ortega-Lopez*, 26 I&N Dec. 99, 100 (BIA 2013); *Matter of Louissaint*, 24 I&N Dec. 754, 756-57 (BIA 2009) (stating that “a crime involving moral turpitude involves reprehensible conduct committed with some degree of scienter, either specific intent, deliberateness, willfulness, or recklessness”). The statute at issue here, Nev. Rev. Stat. § 202.290, does not require any culpable mental state for conviction. Consequently, the Petitioner’s conviction under Nev. Rev. Stat. § 202.290 is not a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act that automatically bars a finding of his good moral character under section 101(f)(3) of the Act. The Director’s determination to the contrary is therefore withdrawn.

2. Petitioner Lacks Good Moral Character under Section 101(f) and the Regulation

Nonetheless, the record shows that the Petitioner 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

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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. . . .

As discussed, the Petitioner pled guilty on [REDACTED] 2010, to a gross misdemeanor charge of Discharging a Weapon Where Person Might Be Endangered. As a condition of his probation, the Petitioner was required to complete anger management classes. During the period of probation, the Petitioner was arrested again. On [REDACTED] 2011, the Petitioner was convicted of Disorderly Conduct. On appeal, the Petitioner contends that more weight should be given to his own account of his 2010 arrest. In his written statement, dated December 3, 2014, the Petitioner described the circumstances leading to his 2010 arrest while he was employed as a bail enforcement agent and attempted to recover a car from an individual on behalf of a local bondsman. He indicated that the individual became immediately irate and irrational and threatened the Petitioner with a gun. The Petitioner claimed that he defended himself with an airsoft gun. The Petitioner's account appears to deny his culpability for the circumstances leading up to his arrest and it is inconsistent with the police incident report. Inasmuch as the petitioner avers his lack of culpability, we cannot look behind the Petitioner's convictions 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 record shows that the Petitioner's second arrest on [REDACTED], 2011, which led to a Disorderly Conduct conviction, involved a domestic violence incident with his spouse, M-M-. The Petitioner's sentence was conditioned upon his completion of a batterer's treatment class. The Petitioner, in his December 3, 2014, statement, recounted that during an argument, M-M- became angry and physically assaulted him. The Petitioner stated that when the police arrived they separately interviewed them, at which time M-M- lied about what happened, claiming that the Petitioner had pushed her by the neck and that the scratches on her arm were from when she ran to the bathroom and got caught by the door when the Petitioner went after her. The Petitioner's denial of his culpability for the underlying circumstances leading to his arrest is in marked contrast to his plea. The plea minutes show that the Petitioner, through his criminal defense counsel, admitted the underlying factual allegations, including that there was "mutual shoving," that the Petitioner and M-M- got into a "physical tussle on the floor," and that when M-M- got up and ran to the bathroom, her arm got caught in the bathroom door as he went after her.

The Petitioner has not claimed that he committed the unlawful acts that led to his convictions for Discharging a Weapon Where Person Might Be Endangered and Disorderly Conduct under extenuating circumstances. Instead, he claims that he did not commit the acts that formed the basis of the criminal convictions. He submits on appeal a psychological evaluation from [REDACTED], who diagnosed him with provisional posttraumatic stress disorder and adjustment disorder with anxiety. Although we acknowledge that the Petitioner was in an abusive relationship with M-M-, as discussed, we cannot look behind the petitioner's convictions to reassess his guilt or innocence. *See id.* The record reflects that the Petitioner was convicted of two offenses involving violence, and as a result he was ordered to participate in an anger management class and a batterer's treatment class. The Petitioner submits evidence of his discharge from probation for his conviction for Discharging a Weapon Where Person Might Be Endangered; however, he was convicted of

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Disorderly Conduction while still on probation for that offense. The criminal court records reveal that the petitioner understood the criminal charges against him, he was represented by counsel, and he pled guilty to both offenses.

On appeal, the Petitioner contends that he merits a finding of good moral character because he has lived in the United States since the age of [REDACTED], obtained his GED, and has had an “industrious and productive life,” establishing a music business in more recent years. The record includes character references from the Petitioner’s neighbor, [REDACTED] and his friends, [REDACTED]

[REDACTED] However, none of these individuals indicate that they had any knowledge of the Petitioner’s convictions or whether he was remorseful and had since rehabilitated.

Upon review of the record in totality, the petitioner’s convictions, his lack of any accountability for the circumstances leading to his arrests, and his lack of any expression of remorse for his unlawful acts, demonstrate conduct that falls below the average citizen in the community and 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). Therefore, the Petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not established that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. 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 appeal is dismissed.

Cite as *Matter of I-R-H-M-*, ID# 14077 (AAO Nov. 10, 2015)