



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

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

MATTER OF L-L-

DATE: NOV. 16, 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. We thereafter denied three motions by the Petitioner and rejected his appeal of one of our decisions. The matter is now before us on another motion to reopen and a motion to reconsider. The motions 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. 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.

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 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.

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(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.

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## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Slovenia who last entered the United States on June 2, 2004, as a J-1 nonimmigrant. He married D-S-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2008, in California and they divorced on [REDACTED] 2009. The Petitioner subsequently filed the instant Form I-360 on July 17, 2009. The Director denied the petition, finding that the Petitioner had not established that he entered into his marriage to D-S- in good faith and that he resided with her. We dismissed the Petitioner's appeal. The Petitioner filed a motion to reopen, which we denied on August 7, 2013, finding that although the Petitioner had established his good faith marital intentions, he had not demonstrated his joint residence with D-S- and his good moral character.<sup>2</sup> In our subsequent decisions of July 28, 2014, and April 8, 2015, denying the Petitioner's second and third motions to reopen and reconsider, we affirmed our prior determination that the Petitioner had not demonstrated his good moral character. The Petitioner has now timely filed his fourth 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 personal declaration 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 motions 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

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<sup>1</sup> Name is withheld to protect the individual's identity.

<sup>2</sup> We rejected the Petitioner's subsequent appeal of our August 7, 2013 decision as we have no appellate jurisdiction over an appeal of our own prior decisions.

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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. . . .

In our August 7, 2013 decision, we determined that the Petitioner had not demonstrated his good moral character because his [REDACTED] 2009 conviction under section 273.6(a) of the California Penal Code for violation of a protective order reflected a lack of good 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). We affirmed this determination in our later decisions of July 28, 2014, and April 8, 2015, concluding that the Petitioner's assertions of his own innocence and ineffective assistance of counsel were insufficient in establishing extenuating circumstances to demonstrate his good moral character despite his conviction. We further held that that we may not look behind the Petitioner's conviction to reassess his guilt or innocence. Our three prior decisions on motion in this matter are hereby incorporated herein.

On motion, the Petitioner again reasserts his innocence in the underlying circumstances leading to his [REDACTED] 2009 conviction for violating D-S-'s protective order against him.<sup>3</sup> He states that we erred in our decision of April 8, 2015, by finding that he knowingly returned to the street where he knew D-S- would be and stopped his vehicle to speak with her in violation of a protective order. The Petitioner contends that extenuating circumstances for his conviction existed, because it was in fact D-S- who initially violated a protective order that he simultaneously had against her. He maintains that the resulting psychological trauma of D-S-'s confrontation left him so intimidated that he was frozen in place and unable to depart the vicinity immediately when he encountered D-S- again a second time on the street, causing him to inadvertently violate the protective order.

As discussed in our prior decisions, insofar as the Petitioner continues to maintain his innocence in violating the protective order against him, we may not look behind his conviction for that offense to reassess his guilt or innocence. *See Matter of Rodriguez-Carillo*, 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 guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). Here, the Petitioner was found guilty of violating a protective order for his spouse after a trial by jury. His conviction under Cal. Penal Code § 273.6(a) required that a jury find that his violation of the protective order was "intentional and knowing" as an element of the offense. We therefore may not go behind his conviction to consider his assertions that he violated the protective order for his wife by accident, which directly contradicts the findings of the jury.

In support of his motion, the Petitioner also submits images of recent text messages with D-S- and her various written declarations sent via those text messages, asserting that on August 11, 2008, she and the Petitioner vacated the protective order she had against him because "it was a

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<sup>3</sup> The Petitioner also submits on motion a copy of his petition for writ of habeas corpus to the Superior Court for the State of California, [REDACTED] with attached supporting documentation, in an attempt to vacate or reopen his conviction under Cal. Penal Code § 273.6(a) based on his claims of ineffective assistance of counsel and his innocence. However, as of this decision, his conviction stands, and the record shows that the Supreme Court of California denied his petition for review on September 10, 2014.

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misunderstanding.” The Petitioner maintains that the protective order was obtained by D-S- through false claims, and thus, challenges the validity of the order that he was found to have violated, asking us to engage in impermissible speculation to conclude that order must have been vacated on that basis. In our prior decision, we stated that there is no evidence to support the Petitioner’s assertions that the protective order was vacated after a judge found that it was obtained through false statements by D-S-. We noted that the Petitioner submitted a copy of D-S-’s request to vacate the restraining order, which shows that she requested it to be lifted because the couple had reconciled. Regardless of the basis of the *vacatur*, at the time the Petitioner violated the protective order in [REDACTED] 2008, it was still in effect and he was convicted of that violation in [REDACTED] 2009, even after the order had already been vacated. The validity of the protection order was an issue for the trial court and is not one that is before us, or over which we have any jurisdiction. Accordingly, insomuch as the Petitioner relies on his claimed innocence in the underlying acts leading to his conviction, he has not satisfied his burden to establish extenuating circumstances for his violation of a protective order.

Upon review of the record in totality, the Petitioner’s conviction, his lack of responsibility for the unlawful acts leading to his arrest, and his failure to establish extenuating circumstances, evidence conduct that falls below the average citizen in the community and adversely reflects 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 has therefore failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### IV. CONCLUSION

On motion, the Petitioner has not overcome the 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 L-L-*, ID# 14517 (AAO Nov. 16, 2015)