



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

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

MATTER OF L-L-

DATE: JUNE 6, 2016

MOTION ON 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) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition, concluding that the Petitioner had not established that he entered into his marriage with his spouse in good faith and that he resided with her and denied the petition. In our decisions on the Petitioner's appeal and four prior motions to reopen, we determined that the Petitioner had overcome the Director's grounds for denial with respect to whether he entered into his marriage in good faith and resided with his spouse but ultimately found the Petitioner ineligible for the benefit he is seeking because he did not establish his good moral character.

The matter is now before us on a fifth motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence, asserting that he is a person of good moral character.

Upon review, we will deny the motions.

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.

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.

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

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) . . . if the offense described therein, for which such person was convicted . . . was committed during such period.

...

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, includes, "any alien 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" 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Section 204(a)(1)(C) of the Act further provides:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii) . . . if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

The evidentiary guidelines are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

A motion to reopen must state the new facts to be proved 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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

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II. ANALYSIS

In our prior decisions, we determined that the Petitioner had not demonstrated his good moral character because his conviction under section 273.6(a) of the California Penal Code for violation of a restraining order obtained by his spouse, D-S-,¹ reflects 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 also found that the Petitioner's assertions of his innocence and ineffective assistance of counsel were insufficient to establish extenuating circumstances in order to demonstrate his good moral character despite his conviction. Here, we again find that the Petitioner is not eligible for classification as an abused spouse because he has not established he is a person of good moral character.

In the brief he submits with the instant motions, the Petitioner asserts that the additional evidence he provides with the motions establishes that he is a person of good moral character. The additional evidence the Petitioner provides consists of a personal declaration by the Petitioner and declarations and letters from several friends and associates of the Petitioner. The regulation at 8 C.F.R. § 204.2(c)(2) provides that, “[p]rimary evidence of the self-petitioner’s good moral character is the self-petitioner’s affidavit . . . [and] . . . [t]he 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.”

The Petitioner explains in his personal declaration that he is a committed and active member of his faith community, performs volunteer community service, recently started a small business, and is self-publishing a novel. He also maintains that he is a person of good moral character because, as he states in his brief on motion, “he now accepts responsibility for his role in the circumstances leading up to his arrest.” In his personal declaration, the Petitioner claims that he maintained his innocence in prior personal declarations, with respect to his conviction for violating the restraining order obtained by D-S-, because he felt it was “unfair” that he was convicted of that offense. The Petitioner now contends that he understands that he made a mistake to travel to [REDACTED] where D-S- lived, to meet with her former boyfriend and that, when D-S- appeared at the same location where he was speaking with her former boyfriend, he should have left the area immediately rather than encountering her a second time, which was witnessed by the police and was the basis for his arrest for violating the restraining order. He also avers that he was not thinking clearly when he violated the restraining order and states, “I should have realized that I was jeopardizing myself, just by being there.”

We may not look behind the Petitioner’s conviction 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). The Petitioner was found guilty after a trial by jury of violating a restraining order intended to protect his spouse. His conviction under Cal. Penal Code § 273.6(a) required that a jury find his violation of the restraining order was “intentional

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

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and knowing” as an element of the offense. We may not go behind the conviction to consider the assertion in his personal declaration that he regrets that he violated the restraining order because of the negative consequences to him.

As noted above, the Petitioner submits with his motions declarations and letters from friends and associates, which he claims establish his good moral character. In his declaration dated December 15, 2015, [REDACTED] states that he is a good friend of the Petitioner, they are members of the same religious faith, and the Petitioner lives in a guest house on his property. He indicates that he is aware that the Petitioner was convicted of violating the restraining order D-S- obtained and that, even after his conviction for that offense, which led to the Petitioner being placed in Immigration and Customs Enforcement (ICE) detention for a period of time before he was released, the Petitioner again violated the restraining order, which resulted in the Petitioner being returned to ICE detention. [REDACTED] asserts that the Petitioner has “learned from his mistakes” and he believes the Petitioner is a person of good moral character but does not explain the basis for his belief. Similarly, [REDACTED] a friend and fellow congregant of the Petitioner, submits a declaration dated December 16, 2015, in which he declares that he knows that D-S- had a restraining order against the Petitioner and that he was arrested and convicted for violating it. [REDACTED] declares that the Petitioner is a “very moral person” but he does not provide any basis for his opinion.

The Petitioner also provides on motion a declaration from [REDACTED] dated February 5, 2009, in which he discusses the Petitioner’s relationship with D-S- but does not provide his opinion of the Petitioner’s moral character. [REDACTED] letter, dated June 18, 2010, indicates that he is a leader in the Petitioner’s faith community and he asserts that the Petitioner is kind and patient but he does not mention whether he is aware of the Petitioner’s conviction. [REDACTED] in his February 12, 2011, letter, indicates that he and the Petitioner belong to the same faith community and that the Petitioner is a person of “strong moral values and ethical behavior” but he, too, does not indicate if he is aware of the Petitioner’s conviction. [REDACTED] indicates in his October 2, 2013, letter that the Petitioner held at that time a trusted position with their congregation and that he is aware of the Petitioner’s conviction.

The declarations and letters from the Petitioner’s friends and associates are not sufficient to establish that the Petitioner is a person of good moral character. Several of the Petitioner’s friends and associates do not provide a basis for their beliefs regarding the Petitioner’s moral character, others do not mention if they are aware of his conviction, and several of the declarations and letters were written several years ago and do not reflect current information regarding the Petitioner. That the Petitioner is engaged in his faith community, volunteers, and is otherwise productive does not overcome the negative evidence in the record of proceedings relative to his moral character.

The Petitioner also claims that we should exercise our discretion to find that, notwithstanding his conviction, extenuating circumstances exist which demonstrate his good moral character. Specifically, the Petitioner contends in his brief he submits with the motions that the abuse he experienced during his marriage to D-S- constitutes extenuating circumstances because he would not have been convicted of violating the restraining order but for the abuse he endured from D-S-. He asserts that D-S- psychologically abused him by making harassing telephone calls and sending

threatening text messages to him, calling his employer seeking to have him fired, threatening to have the Petitioner arrested or deported, and calling the police with baseless allegations against the Petitioner. The Petitioner recounts that he believed at the time he violated the restraining order that being subject to a restraining order rendered him removable from the United States and that D-S- obtained the restraining order in an effort to fulfill her threat to have him deported. The Petitioner asserts that he met with the former boyfriend of D-S- in an effort to obtain information that he could then use to terminate the restraining order to avoid any immigration consequences and, in doing so, he came into contact with D-S-. The Petitioner also claims that he is eligible for a waiver for his conviction under section 237(a)(7) of the Act.

The Petitioner has not demonstrated that the battery or extreme cruelty he experienced “compelled or coerced him . . . to commit the . . . crime for which he . . . was convicted.” See Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQOPRD 70/8.1/8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions* 3 (Jan. 19, 2005), <http://www.uscis.gov/laws/policy-memoranda>. Here, the police incident report indicates that the responding police officer noted that the Petitioner was “angry and nervous” and D-S- “appeared fearful of [the Petitioner]” when the officer was at the scene where the violation occurred. In addition, by his own admission, after the Petitioner’s initial, unanticipated contact with D-S-, he then remained in the vicinity of D-S- on his own volition, which resulted in his arrest for violating the restraining order. Although the Director determined that D-S- battered or subjected the Petitioner to extreme cruelty, there is no evidence in the record of proceedings that D-S- compelled or coerced the Petitioner into violating the protection order that D-S- lawfully obtained against the Petitioner. Consequently, the Petitioner has not established that his conviction was connected to having been battered or subjected to extreme cruelty, and he is therefore unable to establish his good moral character through the application of section 204(a)(1)(C) of the Act. Section 101(f)(3) of the Act thus precludes a finding of the Petitioner’s good moral character, as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

III. 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 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). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

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FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of L-L-*, ID# 8468 (AAO June 6, 2016)