U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-T-B-S-

DATE: NOV. 17, 2016

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) 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded that the Petitioner had not established his good moral character.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. 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 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

. . . .

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

. . . .

(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 . . . 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 determining a petitioner's good moral character, section 101(f) of the Act provides, 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:

. . . .

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section)."

. . . .

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 . . . .

The list of aggravated felonies at section 101(a)(43) of the Act includes:

(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment [is] at least one year . . . .

Title 18 U.S.C. § 16 defines a "crime of violence" as —

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The evidentiary standard and guidelines for a VAWA petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which provides, in pertinent part:

> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .
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> . . . .
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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 . . . . 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.

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).

II. ANALYSIS

A. The Petitioner's Criminal History

The Petitioner provided a statement in which he advised that he had not been arrested in the three-year period prior to filing the VAWA petition. He also provided his Washington State Patrol criminal history information and multiple case docket inquiries which demonstrate the following relevant criminal history:

- On [redacted] 2008, the Petitioner was charged with: (1) assault in the 4th degree (strangulation) in violation of Wash. Rev. Code section 9A.36.041, a gross misdemeanor; (Case No. [redacted] He was also charged with exposing children to domestic violence in violation of Wash. Rev. Code section 9.94A.535(10)(3)(2007), a gross misdemeanor. (Case No. [redacted] On [redacted] 2009, the Petitioner was found guilty of both charges. He was sentenced to 364 days imprisonment on the first charge, with 354 days suspended. He was also sentenced to 364 days imprisonment on the second charge, with 334 days suspended and 18 days credit for time served. On at least two occasions ([redacted] 2009, and [redacted] 2010), the Petitioner's probation officer notified the court that the Petitioner had violated the terms of his probation. On one occasion, [redacted] 2009, the court found that the Petitioner was not complying with the terms of his probation and ordered him to serve 10 days imprisonment out of his original suspended sentence, with credit for two days served.
- On [redacted] 2008, the Petitioner was charged with a violation of a no contact order in violation of Wash. Rev. Code section 26.50.110, a gross misdemeanor (Case No. [redacted] On [redacted] 2008, he pled guilty and was convicted. He was sentenced to 365 days imprisonment, and a fine of $5000.000. Imposition of 360 days was suspended, and all but $100.00 of the fine was suspended. The Petitioner was also placed on probation for a period of 24 months and ordered to have no contact with the victim for 24 months. On at least three occasions ([redacted] 2008, [redacted] 2008, and [redacted] 2009), the Petitioner's probation officer notified the court that the Petitioner had violated the terms of his probation. Although the court referred the matter back for continuation of probation without taking further action on two occasions, on [redacted] 2009, the court found that the Petitioner was not complying with the terms of his probation and ordered him to serve 90 days imprisonment out of his original suspended sentence.
- On [redacted] 2008, the Petitioner was charged with violation of a no contact order in violation of Wash. Rev. Code section 26.50.110, a gross misdemeanor (Case No. [redacted] A bench warrant was issued and served on the Petitioner. On [redacted] 2009, the Petitioner was found guilty and sentenced to 364 days in jail, with 354 days suspended, and a fine of $5,000.00, with all but $100.00 suspended. On at least two occasions ([redacted] 2009, and [redacted] 2010), the Petitioner's probation officer notified the court that the Petitioner had violated the terms of his probation. As indicated above, on [redacted] 2009, the court found that the Petitioner was not complying with the terms of his probation and ordered him to serve 10 days imprisonment out of his original suspended sentence, with credit for two days served.
- On [redacted] 2009, the Petitioner was charged with driving with a license suspended in the third degree (Case No. [redacted] He was also charged with violation of a no contact order (Case No. [redacted] On [redacted] 2009, the charges were dismissed with prejudice.
- On [redacted] 2009, the Petitioner was arrested by the [redacted] Sheriff's office and charged with violation of a domestic violence court order, in violation of Wash. Rev. code section 26.50.110(1). On [redacted] 2009, he was found guilty and sentenced to 12

months in jail. (Court Case No. [redacted] The imposition of the sentence was suspended and the Petitioner was sentenced to 30 days in jail.[1]

1. Whether the Petitioner's [redacted] 2008 Conviction is an Aggravated Felony That Precludes a Finding of Good Moral Character under Section 101(f)(8) of the Act.

An offense can only constitute a crime of violence if it has as an element, the use, attempted use or threatened use of "physical force against the person or property of another." *See* 18 U.S.C. § 16(a) and (b). Section 26.50.110 of the Wash. Rev. Code contains five separate subsections defining what constitutes a violation of the statute. However, the distinct subsections cover conduct that would constitute a crime of violence and conduct that would not. For instance, although a violation of subsection (1)(a)(i) of Wash. Rev. Code section 26.50.110 includes acts or threats of violence against a protected party, violations of subsections (1)(a)(ii)-(iv) do not, as they merely prohibit a person from specific locations, from knowingly coming within a specific distance, and from interfering with efforts to remove a pet, and do not otherwise involve "use, attempted use, or threatened use of physical force against the person or property of another" or "a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." *See* 18 U.S.C. § 16. Thus, section 26.50.110 of the Wash. Rev. Code is not categorically a crime of violence.

In looking to the documents that the Petitioner provided with respect to his 2008 conviction, the record does not further elucidate whether the offense is a crime of violence. Specifically, the court docket records indicate only that the Petitioner was convicted of a violation of Wash. Rev. Code section 26.50.110, but do not specify which of the subsections apply. Accordingly, there is insufficient evidence to demonstrate that the Petitioner's conviction was for a crime of violence under 18 U.S.C. § 16 and thus an aggravated felony under section 101(a)(43)(F) of the Act.[2] We withdraw the Director's determination on this issue; however, her ultimate determination that the Petitioner has not otherwise established his good moral character still stands.

2. The Petitioner Lacks Good Moral Character under the "Catch-All" Provision of Section 101(f) of the Act and the Regulation

Even if the Petitioner's [redacted] 2008 conviction does not fall within an enumerated provision of section 101(f) of the Act, the record is still insufficient to establish the Petitioner's good moral character. 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 . . . 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

[1] The Petitioner does not indicate this arrest on his "Criminal History Chart."

[2] Because the record does not establish that the Petitioner's conviction was for a crime of violence, we do not need to address the length of the Petitioner's term of imprisonment under the second part of section 101(a)(43)(F) of the Act.

an automatic finding of lack of good moral character." Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v).

In his initial statement, the Petitioner asserted that his spouse, B-L-,[3] reported him to the police for domestic violence as a way to control him. He denied that he had abused her and instead indicated that he pled guilty because his attorney advised him "that it was a better deal to just accept the charges." He admitted that he violated B-L-'s no contact orders, but indicated that he did so at her request because she had "no one to help her" and he wanted to see his daughter. The Petitioner included a statement from his mother in which she suggested that the Petitioner pled guilty to the 2008 offense because his attorney advised him it would "finish the case faster." He also provided a statement from his sister who explained that she had resided with the Petitioner and B-L- and had observed B-L-'s manipulative behavior, as a result of which the Petitioner's sister "wonder[ed] if it was really true" when B-L- told her that the Petitioner had abused B-L-. The Petitioner's mother and sister attested that he is a devoted father who provides for his children, but neither one discussed the Petitioner's criminal history record other than to indicate that he was falsely accused of the offenses for which he was ultimately convicted.

The Petitioner also submitted documents showing that he had obtained an *ex parte* restraining order against B-L- in 2012, and that he has been awarded custody of his children because his wife failed to appear in court during custody hearings; however, these documents appear to reflect on B-L-'s character rather than that of the Petitioner.

As discussed above, the Petitioner's criminal history reflects that he pled guilty to and was found guilty of several separate offenses involving violation of a no contact order and was also convicted of assault in the fourth degree involving strangulation, and exposing children to domestic violence. He also has been found guilty of other offenses based on his record of domestic violence against B-L-. We may not look behind the Petitioner's convictions 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 court records that the Petitioner provided further reflect that although he was not ultimately convicted of additional offenses, he was repeatedly reported for violating the terms of his probation for several convictions, and in two instances portions of his suspended sentences were revoked and imposed based on his probation violations. These additional factors do not reflect positively on the Petitioner's character.

The Petitioner also indicated that he should be considered a "victim-defendant" because his offenses occurred within the context of B-L-'s abuse. He asserted that B-L- had invited him to contact her and he did so despite the no contact orders because B-L- had no one else to help her and he wanted to see his daughter. On appeal, the Petitioner continues to assert that his convictions were a result of B-L-'s abusive behavior, and therefore do not preclude a finding of good moral character. He further asserts that he merits a finding of good moral character because he "has no crimes during the

[3] Name withheld to protect the individual's identity.

three years immediately preceding the filing" of the VAWA petition. Regarding the Petitioner's assertion that his criminal history is not disqualifying because it occurred outside of the three-year period prior to filing, although the regulation at 8 C.F.R. § 204.2(c)(2)(v) only requires evidence of a petitioner's good moral character during the three years preceding the filing of the petition, it does not limit U.S. Citizenship and Immigration Services' (USCIS) inquiry into a petitioner's moral character to only this period. In fact, section 204(a)(1)(A)(iii) of the Act does not prescribe any specific time period during which a petitioner's good moral character must be established.

With respect to the Petitioner's claim that he is eligible for a waiver under section 212(h) of the Act, we acknowledge that section 212(h) of the Act sets forth inadmissibility waiver provisions for certain offenses. However, the issue in this proceeding is the Petitioner's eligibility to receive immigrant classification as an abused spouse of a U.S. citizen pursuant to section 204(a)(1)(A)(iii) of the Act, not his admissibility to the United States.[4]

Although the Petitioner maintains that he is a person of good moral character, his assertions are inconsistent with his convictions and the protective orders issued against him. The Petitioner's statements acknowledge that he violated B-L-'s no contact orders on multiple occasions but he suggests that this was to "help" B-L- at her own request and to visit his daughter. He does not fully discuss any of the incidents that led to his convictions, including the circumstances relating to his convictions for assault and exposing his children to domestic violence, or demonstrated expressions of remorse for his unlawful acts. Although the record includes character references from family members, they and the Petitioner have denied that he committed any of the offenses of which he was convicted. Neither the Petitioner nor his family members acknowledge the Petitioner's own responsibility and role in his convictions nor do they indicate whether he is remorseful and has since rehabilitated. Ultimately, upon review of the record in totality, the Petitioner's behavior demonstrates 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).

B. Qualifying Marital Relationship and Corresponding Eligibility for Immigrant Classification

As an additional matter, the Petitioner has not established that B-L- is a U.S. citizen.[5] Therefore, he has not established that he shared a qualifying marital relationship with B-L- and his corresponding eligibility for immigrant classification. The Petitioner advised that he could not provide a copy of B-L-'s birth certificate or U.S. passport. He submitted a copy of their marriage certificate and their children's birth certificates, all of which reflect that B-L- was born in the United States. However, the marriage certificate and his son's birth certificate contain other inaccurate information as both

[4] Similarly, to the extent that the Petitioner is referencing a waiver under section 204(a)(1)(C) of the Act, that provision relates to waivers of specific grounds of inadmissibility and deportability. At issue here is the Petitioner's eligibility under the "catch-all" provision of the regulation.

[5] We may deny an application or petition that does not comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

documents reflect that the Petitioner was born in California, whereas he was actually born in Mexico. Although the marriage certificate and birth certificates are primary evidence of the marriage and the citizenship of the Petitioner's children, the Petitioner has not established that that the authorities who collected the remaining information on the documents otherwise reviewed B-L-'s birth certificate or U.S. passport in order to confirm her citizenship. Without other evidence to establish B-L-'s U.S. citizenship, the documents provided by the Petitioner are not sufficient to establish B-L- is a U.S. citizen. Accordingly, the Petitioner has not established that he shared a qualifying marital relationship with a U.S. citizen and his corresponding eligibility for immigrant classification. For this additional reason, the VAWA petition may not be approved.

III. CONCLUSION

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 appeal is dismissed.

Cite as *Matter of J-T-B-S-*, ID# 66386 (AAO Nov. 17, 2016)