



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

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

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

DATE: SEPT. 12, 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. The Petitioner timely filed an appeal, which we dismissed. We also dismissed subsequent motions to reopen and reconsider. The matter is again before us on a motion to reconsider. On motion, the Petitioner submits a brief. The Petitioner claims that we erred in our previous decisions by finding that he did not establish his good moral character.

Upon review, the motion to reconsider will be granted.

I. APPLICABLE LAW

8 C.F.R. § 103.5(a) provides, in pertinent part:

A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) because the Petitioner did not establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. We dismissed a subsequent appeal because the Petitioner had not established his good moral character.

Matter of A-C-D-L-C-

The Petitioner thereafter filed motions to reopen and reconsider. We issued an RFE regarding the Petitioner's good moral character because a public records search revealed that the Petitioner had been arrested and convicted on new charges, and he had subsequently violated his probation prior to the issuance of our appellate decision in this matter. The Petitioner's motion did not discuss the Petitioner's most recent arrests. We dismissed the motions to reopen and reconsider finding that the Petitioner had not established his good moral character.

III. ANALYSIS

In our prior decision on motion, we determined that the Petitioner had not demonstrated his good moral character because his unlawful acts adversely reflected on his moral character. Specifically, the Petitioner was convicted in Colorado of driving under the influence of alcohol (DUI) in 2005. He was also convicted of driving without insurance for which he was resentenced to 30 days after he violated his mandatory community service. The Petitioner also had a 2011 conviction for domestic violence conduct-unreasonable noise for which he was sentenced to 364 days of unsupervised probation,

During the pendency of his appeal of the denial of his Form I-360, the Petitioner was again arrested 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. 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 disclosed that the Petitioner was initially charged with violating his probation when he was arrested in 2015, for assault and disturbing the peace, stemming from allegations made by his spouse, R-C-, but which were later dismissed. At the time of our decision on motion, the Petitioner had complied with all the requirements of his probation for his 2013 DUI conviction, but his two year probation term would not be terminated until 2015. The Petitioner has now completed his probation.

In support of his second motion to reconsider, the Petitioner submits a brief, in which he contends that we erred as a matter of law in treating his probation as a mandatory statutory bar to good moral character. The Petitioner misconstrues our prior decision in his assertion that his case was denied solely because he remained on probation. A Petitioner who has satisfactorily completed probation is not precluded from establishing his good moral character. In this case, however, the Petitioner did not disclose his [REDACTED] 2013, DUI conviction, and instead asserted that since his 2010 arrest he "maintained a clean record and ha[d] not been arrested thereafter." Additionally, the Petitioner only submitted evidence of his 2013, DUI conviction after we issued an RFE. We determined that the Petitioner's behavior fell below the standards of the average citizen in the community and that he was 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).

The Petitioner reasserts on motion that he is a person of good moral character, notwithstanding his arrests and convictions. The Petitioner further asserted 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 had been subjected to battery and extreme cruelty by R-C-. In his updated declaration in response to our RFE, the Petitioner detailed how he had avoided alcohol since 2007, but succumbed in 2013, because he was feeling depressed and in pain after his father's death. The Petitioner expressed remorse and noted that he had successfully completed all the requirements of probation following his 2013 conviction for DUI. He also explained the circumstances of his 2015 arrest for assault, which he asserted stemmed from false charges by his spouse, R-C-. The Petitioner provided evidence to demonstrate that the charges against him were dismissed. The Petitioner maintained that he did not intentionally fail to disclose his arrests to us on motion, but rather, that he had focused on his 2011 conviction because that had been the basis of our dismissal of his appeal. He asserted that he has demonstrated remorse and rehabilitation for his actions.

On the instant motion to reconsider, the Petitioner has established that he is a person of good moral character. As stated by 8 C.F.R. § 204.2(c)(1)(vii), 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. We do not condone the Petitioner's DUI convictions and corresponding violation of probation and his conviction for domestic violence conduct-unreasonable noise, and driving without insurance. While these offenses evidence a lack of good judgment, none of the Petitioner's convictions fall within one of the enumerated subsections of section 101(f) of the Act such that they would automatically bar a finding of his good moral character. In addition, the Petitioner has now demonstrated his rehabilitation. On motion, the Petitioner explains the circumstances surrounding the 2013 conviction for DUI and the 2015 arrest for assault and we find the Petitioner's explanations to be reasonable and the inconsistencies regarding his criminal record to be resolved. In addition, the record also reflects that the Petitioner has complied with probation in relation to his 2013 DUI conviction; that he has completed his 52 hours of community service; paid all fines; completed 68 hours of an alcohol therapy program. The Petitioner expresses remorse for his poor decisions and asserts that he has not reoffended. Accordingly, the Petitioner has established by a preponderance of the evidence that he is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. 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 now been met.

ORDER: The motion to reconsider is granted and the appeal is sustained.

Cite as *Matter of A-C-D-L-C-*, ID# 66466 (AAO Sept. 12, 2016)