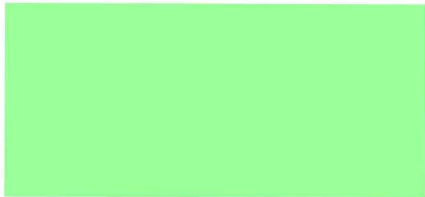




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: NOV 17 2014 Office: VERMONT SERVICE CENTER

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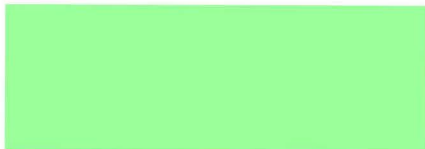


IN RE: Self-Petitioner:



PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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 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)(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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a native of the former Yugoslavia and a citizen of Kosovo who entered the United States on July 29, 2003 as a nonimmigrant student. The petitioner married a U.S. citizen on June [REDACTED] Iowa. The petitioner filed the instant Form I-360 on February 28, 2013.¹ The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner, through counsel, responded to the RFEs with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the additional evidence on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reason.

¹ The petitioner is currently in removal proceedings and his next hearing is on April 1, 2015 at the Omaha Immigration Court.

Good Moral Character

Petitioner's Criminal Convictions

The record provides the following account of the petitioner's criminal history. On April [REDACTED] the petitioner was convicted in the Iowa District Court for [REDACTED] of interference with official acts in violation of section 719.1 of the Iowa Code and failure to pay parking tickets in violation of the [REDACTED] Municipal Code and ordered to pay designated fines. He was convicted on February [REDACTED] in the Iowa District Court for [REDACTED] of driving with a suspended license in violation of section 321.218 of the Iowa Code and sentenced to pay designated fines. The petitioner's Iowa Department of Transportation driving record abstract reveals that he was again convicted of driving with a suspended license one year later on February [REDACTED] and then on September [REDACTED]

On February [REDACTED] the petitioner was convicted in the Iowa District Court for [REDACTED] of operating a motor vehicle while intoxicated (first offense), in violation of section 321J.2 of the Iowa Code and driving while barred in violation of sections 321.560 and 321.561 of the Iowa Code. He was sentenced for operating a motor vehicle while intoxicated to 60 days imprisonment in the county jail, which was suspended with credit for two days served, two years of probation and payment of fines. He was also given a suspended sentence of 60 days and two years of probation (to run concurrently with the first count) and ordered to pay fines for driving while barred. The District Court for [REDACTED] held probation revocation proceedings for the petitioner on November 10, 2011 and April 30, 2013. During the first hearing the petitioner was found in contempt of court for having violated the terms of his probation and ordered to serve two days in the county jail and continue with probation. The petitioner's probation was revoked in the second hearing and he was ordered to serve four days in the county jail.

On October [REDACTED] the petitioner was convicted in the Iowa District Court for [REDACTED] of operating a motor vehicle while intoxicated (second offense), in violation of section 321J.2 of the Iowa Code and driving while barred in violation of section 321.561 of the Iowa Code. The petitioner was sentenced for operating a motor vehicle while intoxicated to two (2) years of imprisonment with all of but 49 days suspended with a credit for 45 days served. He was sentenced for driving while barred to 45 days imprisonment with credit for 45 days served and ordered to pay additional fines. The District Court for [REDACTED] on April 10, 2013 found the petitioner in contempt of court for violating the terms of his probation and sentenced him to 75 days of imprisonment in the county jail. He was discharged from probation after he was released from jail.

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 subparagraphs (A) of section 212(a)(2), which states, in pertinent part: "(i) 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"

The director determined that the petitioner's multiple convictions for operating a motor vehicle while intoxicated and driving while barred constitute crimes involving moral turpitude pursuant to the holding in *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999). In *Matter of Lopez-Meza*, the Board of Immigration Appeals (BIA) noted that conviction for a simple driving while under the influence (DUI) offense is ordinarily a regulatory offense that involves no culpable mental state requirement, such as intent or knowledge, and therefore is not a crime involving moral turpitude. 22 I&N Dec. 1188, 1194. It held, however, that a conviction for aggravated DUI under section 28-697(A)(1) or section 28-1383(A)(1) of the Arizona Revised Statutes qualifies as a crime involving moral turpitude as it requires a showing that the offender was knowingly driving with a suspended, canceled, revoked, or refused license. 22 I&N at 1195. The BIA found that "a person who drives while under the influence, knowing that he or she is absolutely prohibited from driving, commits a crime so base and so contrary to the currently accepted duties that persons owe to one another and to society in general that it involves moral turpitude." *Id.* at 1196.

In the present matter, the petitioner has been convicted of a first and second offense of operating while under the influence of alcohol or a drug or while having an alcohol concentration of .08 or more in violation of section 321J.2 of the Iowa Code, which at the time of his conviction stated, in pertinent part:

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:
 - a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - b. While having an alcohol concentration of .08 or more.
 - c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

Iowa Code Ann. § 321J.2 (West 2011).

The petitioner also has two convictions for driving while barred, which are concurrent with his operating while under the influence convictions, under section 321.561 of the Iowa Code. This provision at the time of his conviction stated:

It shall be unlawful for any person found to be a habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560 except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2. A person violating this section commits an aggravated misdemeanor.

Iowa Code Ann. § 321.561 (West 2011).

Neither of these statutes requires a culpable mental state for conviction or involves conduct that in and of itself is vile and depraved. See *Matter of Lopez-Meza*, 22 I&N Dec. at 1194 (simple driving while intoxicated would not likely be a crime involving moral turpitude). See also *Matter of Torres-Varela*, 23 I&N Dec 78 (BIA 2001) (DUI with two or more prior DUI convictions is not a crime involving moral turpitude). The director combined the petitioner's offenses and erroneously assumed that the statutes of convictions required the guilty knowledge and culpable conduct at issue in *Matter of Lopez-Meza*. However, neither of the Iowa statutes criminalizing operating while under the influence and driving while barred requires guilty knowledge or inherently base conduct. Consequently, the petitioner's convictions under sections 321J.2 and 321.561 of the Iowa Code are not crimes involving moral turpitude that automatically bar a finding of his good moral character under sections 101(f)(3) and 212(a)(2)(A)(i)(I) of the Act.

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

Nonetheless, the record shows 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 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 record reflects that the petitioner has been convicted of multiple offenses since his entry into the United States including: interference with official acts; three convictions for driving with a suspended license; two convictions for operating a motor vehicle while intoxicated; and two convictions for driving while barred. The probation he received for his first offense of operating while under the influence and driving while barred was revoked on April 30, 2013. The probation for his second conviction for operating while under the influence and second conviction for driving while barred was revoked on April 10, 2013. These revocation proceedings were conducted while the instant Form I-360 was pending. The last probation violation report is dated March 11, 2013 and summarizes that the petitioner: (1) failed to fulfill his court ordered financial obligations; (2) was discharged from his substance abuse treatment program for failing to attend as scheduled; (3) had two positive urinalyses for cocaine; (4) failed to appear for his probation violation hearings in both [redacted] and (5) was out of contact with his supervising agent. In addition, the petitioner's Certified Abstract of Driving Record from the Iowa Department of Transportation dated May 8, 2013 states that his license was suspended indefinitely on June 23, 2010 for "Non-payment of Child Support."

In his declaration submitted on appeal, the petitioner states that he became an alcoholic because his marriage was deteriorating. He asserts that he now accepts responsibility for his actions and is now attending Alcoholics Anonymous meetings and an outpatient treatment program at [REDACTED]

The petitioner states that he is also interested in reaching out to other members of the community from the former Yugoslavia and he has made donations to charities to help Kosovan Albanians and the typhoon relief effort in the Philippines. He contends that he is currently not drinking or using drugs and he is working on his substance abuse recovery. The petitioner states that he has entered into an agreement with the Iowa state courts in [REDACTED] counties for the payment of court costs and fees. The petitioner does not acknowledge or discuss his indefinite driver's license suspension for failure to pay child support.

On appeal, counsel asserts that the abuse the petitioner suffered may underlie his substance abuse and other poor behavior. Counsel contends that the petitioner has now "undertaken very significant rehabilitation" that "attests to his growth and good moral character." The petitioner in his statement indicates that his alcoholism stemmed from his deteriorating marriage. However, he failed to establish a causal connection between his convictions for driving while intoxicated while barred as a habitual offender and the abuse. Nor does he establish that his probation violations were related to the abuse or any other extenuating circumstances.

The record also does not support counsel's assertion that the petitioner has now demonstrated his rehabilitation. The evidence the petitioner submits on appeal reflects that he attended an initial intake appointment with [REDACTED] but no evidence was submitted to show that he has continued with the treatment program. He submits electronic mail correspondence from his Alcoholics Anonymous (AA) program sponsor who states that he has known the petitioner for two years. However, the petitioner's AA sponsor does not discuss his knowledge of the petitioner's convictions and rehabilitation. In addition, the petitioner submits his payment plan agreements with the respective District Courts in [REDACTED]. The agreements reflect that the petitioner owes \$6,460.83 to [REDACTED] and \$2,905.88 to [REDACTED]. The petitioner has an outstanding balance of over \$9,300 for failure to pay his financial obligations to these counties. His efforts to now make payments that should have been fulfilled pursuant to the terms of his original sentencing orders over three years ago is of little value in establishing his good moral character. Finally, the record shows the petitioner's license was suspended indefinitely for his failure to pay child support and the petitioner has not established any extenuating circumstances surrounding that suspension or even acknowledged his failure to meet his child support obligations.

The petitioner's recent convictions, probation violations and license suspension for failure to pay child support all demonstrate conduct that falls below the average citizen in the community and he has committed unlawful acts which 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). 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.

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.