U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29461361

Date: DEC. 07, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident (LPR) of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish his good moral character. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

A VAWA self-petitioner who is the spouse or ex-spouse of an LPR may self-petition for immigrant classification if the petitioner shows they entered into marriage with their LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii)(I)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(E). In addition, the petitioner must show they are a person of good moral character. Section 204(a)(1)(B)(ii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(F).

Good moral character is assessed under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act enumerates grounds that will automatically preclude a finding of good moral character. In addition, it states 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 . . . ." Section 101(f) of the Act. USCIS evaluates a VAWA self-petitioner's claim of good moral character on a case-by-case basis, considering the provisions of section 101(f) of the Act and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). As explained in policy guidance, USCIS generally examines the three-year period immediately preceding the date the VAWA petition is filed; however, if there is evidence that a self-petitioner's conduct or acts do not fall under the enumerated grounds at section 101(f) of the Act but are contrary to the standards of the average citizen in the community, we consider all of the evidence in the record to determine whether the self-petitioner has established their good moral character. *See* 3 *USCIS Policy Manual* D.2(G)(3), https://www.uscis.gov/policy-manual. Unless a VAWA self-petitioner establishes extenuating circumstances, they will be found to lack good moral character if they committed unlawful acts that adversely reflect upon their moral character, although the acts do not require an automatic finding of lack of good moral character, or were not convicted of an offense or offenses but admit to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii). USCIS shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

In our prior decision, incorporated here by reference, we agreed with the Director and concluded that the Petitioner had not established his good moral character, particularly after a review of his [redacted] 2011 arrest. The record reflects that in [redacted] 2011, the Petitioner was arrested after an argument with his spouse and charged with threats of violence (terroristic threats) under Minnesota Statutes Annotated section 609.713 and an offense relating to emergency telephone calls and communications in violation of Minnesota Statutes Annotated section 609.78. The disposition of these charges was "Decline to Prosecute." In relation to the same arrest, the Petitioner was subsequently charged before the District Court for interference with a 911 call, a gross misdemeanor, in violation of Minnesota Statutes Annotated section 609.78.2 and misdemeanor fifth degree domestic assault in violation of Minnesota Statutes Annotated section 609.2242. Pursuant to a plea agreement, he pled guilty to misdemeanor disorderly conduct.[1]

With his motion, the Petitioner submits a brief, and copies of evidence already included in the record. In his brief, the Petitioner provides citations to a conference report issued by the Senate Judiciary Committee and academic articles to support his assertions that police reports are "one-sided and self-serving." The Petitioner cites *Schware v. Board of Bar Examiners*, which stated that "[t]he mere fact that a man has been arrested has very little, if any probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense." 353 U.S. 232, 241 (1957). The Petitioner further notes that the police are only generally required to have "probable cause to believe that a criminal offense has been or is being committed," based on a reasonable interpretation of the facts known to the arresting officer at the time of the arrest." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). However, these arguments do

[1] Our prior decision also reflected the Petitioner's prior arrest in [redacted] 2003 for driving while intoxicated, and petty misdemeanors relating to parking violations between [redacted] 2017 and [redacted] 2018.

not reflect a precedent that would restrict us from reviewing the police report in the exercise of our discretion. Similarly, his citation of academic articles which discuss the objectivity or unreliability of police reports are not legal citations and are not binding on USCIS.

The Petitioner again asserts that the police report relating to his [redacted] 2011 arrest cannot be used to deny him a benefit because it is unreliable and uncorroborated, the involved parties did not testify under oath, and the arrest did not lead to a conviction. He again cites *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995), in alleging that arrest reports cannot form the basis for a denial. We noted in our prior decision that although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may consider them in our exercise of discretion. *Matter of Arreguin* at 42 (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports); *see also Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) *and Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995)) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised).

The Petitioner acknowledges that in administrative immigration adjudications, evidence is admissible as long as it is "probative" and "fundamentally fair," citing *Matter of Velasquez*, 19 I&N Dec. 377, 380 (BIA 1986) ("[Documentary evidence] need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law."). However, he then references the Federal Rules of Evidence, as well as those from several individual states, and contends that "all evidence submitted in a civil or criminal trial must be admissible under statutorily-enacted rules of evidence" and that one type of evidence not allowed is hearsay. However, as the Petitioner notes, this is an administrative immigration adjudication, and not a civil or criminal trial, and as such, the Petitioner's contentions that we should not review the police report because it could be considered hearsay in a civil or criminal trial are unavailing.

The Petitioner reiterates his contention, made with his appeal, that "[a] 'rap sheet' alone is insufficient to establish a crime involving moral turpitude" (CIMT), and that we can only rely on facts to which he "necessarily pleaded." In support of his argument, he cites *Wala v. Mukasey*, 511 F.3d 102, 108 (2d Cir. 2007) and *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 1087 (9th Cir. 2017). However, as we noted in our prior decision, both cases relate to whether an individual had committed or been convicted of a CIMT, which is not at issue here. For immigrant classification under the VAWA provisions, a good moral character determination is both a statutory and discretionary matter. *See* 8 C.F.R. § 204.2(c)(1)(vii) (stating that good moral character is "evaluated on a case-by-case basis" and listing non-statutory factors such as "extenuating circumstances" and the "standards of the average citizen in the community"). The Petitioner has not established his good moral character under the regulatory standards of 8 C.F.R. § 204.2(c)(1)(vii) because his conduct falls below the standards of the average citizen in the community, regardless of whether he has committed or been convicted of a CIMT. He further restates his contention that the police report is unreliable because it is unknown whether he was read his Miranda rights. As we noted in our prior decision, the police report indicates that officers read him the Miranda warning before his interview at the [redacted] jail on the day of his arrest and that during his subsequent interview the next day he also gave "a post Miranda statement."

With his motion, the Petitioner again states that our decisions focused only on some language in the police reports and used "his accuser's speech against him" and "discount[ed] portions of the report that indicate[d] that [the Petitioner] did not threaten" his spouse. He alleges that the Director incorrectly determined that the Petitioner "did not deny threatening to kill [his] spouse in front of the kids, only that [he was] just playing." Instead, he states that the police report and statement of probable cause both indicate that he informed police he did not threaten his spouse with the potato peeler, and that the incident report also stated his spouse was the one who grabbed the potato peeler. But the record does not support the Petitioner's claim that he never admitted to threatening his spouse. The police report narrative from the date of the incident reflects that during statements to police at the [redacted] jail, the Petitioner claimed that although he did have a potato peeler in his hand and "was waving the potato peeler at" his spouse, "it was not in a threatening manner" and he was not in close proximity to her. When police asked whether he threatened to kill his spouse, the Petitioner responded, "just play, no kill." The statement of probable cause also indicates that the Petitioner admitted to having a potato peeler in his hand but "that he did not threaten [his spouse] with it," and that when asked if he threatened to kill his spouse, he "stated he was just playing." In a personal statement submitted with his RFE response, he offered a different timeline, stating that during a conversation in the kitchen, he "jokingly had a potato peeler in [his] hand and [he] jokingly held it up and said be quiet," after which the argument began. However, during a second interview with a detective the day after his arrest, the Petitioner said "he did pick up a potato peeler and pointed it at [his spouse] and said he was going to kill her. [H]e said he was going to kill her just for play and he did not mean it," and he "did not put the potato peeler up against [his spouse] or to her stomach." Accordingly, the Petitioner's claims on appeal did not acknowledge or explain his full statements as reflected in the police reports, which conflict with his assertion that he never told police he threatened to kill his spouse and "[t]here is no factual basis to any threat."

Finally, the Petitioner contends that his positive factors outweigh the "allegation" of disorderly conduct, and that he is a person of good moral character. The Petitioner reiterates, and resubmits copies of, the evidence that he has already submitted to the record, and which were considered in our prior decision. The Petitioner provides a citation to *Matter of T*, 6 I&N Dec. 474 (BIA 1955) where the respondent was "arrested several times" but only convicted of disorderly conduct, and notes that the Board of Immigration Appeals "reviewed the entire record and the actual convictions and noted that the Respondent may have committed an act of prostitution, however she is not a prostitute" and contends that this equates to him making "a poorly worded joke in a moment of frustration." However, as we previously concluded in our decision on his appeal, the record reflects that the Petitioner told police that he pushed his spouse onto the bed, removed the battery from the phone so that she could not call 911, and pointed a potato peeler at her while stating that he was going to kill her, although he claims it was only for play and he did not mean it. The Petitioner has not acknowledged or explained this portion of his statement as recorded in the police report, instead denying that he ever admitted to threatening his spouse, and incorrectly claims on appeal that no conviction resulted from the [redacted] 2011 arrest. Therefore, the record does not reflect that the Petitioner has provided a complete picture of his conduct. Moreover, he has not established extenuating circumstances that would mitigate the adverse impact of his criminal history on his good moral character determination.

Therefore, the Petitioner has not met his burden of establishing by a preponderance of the evidence that he is a person of good moral character, and he cannot show his eligibility for immigrant classification as the abused spouse of an LPR under VAWA. On motion to reconsider, the Petitioner

has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

FURTHER ORDER: The motion to reconsider is dismissed.