



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: NOV 19 2014 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:  
[REDACTED]

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 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 the petitioner's failure to establish that he is a person of good moral character.

On appeal, counsel submits a statement 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. 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:

*Evidence for a spousal self-petition –*

(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.

In addition, the regulations require that to remain eligible for immediate relative classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, entered the United States on August 19, 1999 as a nonimmigrant border crosser. The petitioner was personally served with a Notice to Appear on June 23, 2006 and placed in removal proceedings. On July [REDACTED], while the petitioner was in immigration proceedings, he married, M-E-<sup>1</sup>, a U.S. citizen, in Denver, Colorado. M-E- filed a Form I-130, Petition for Alien Relative, which was approved but subsequently revoked on April 22, 2011 due to M-E-'s failure to establish the bona fides of the marriage by clear and convincing evidence pursuant to section 204(g) of the Act. The petitioner filed the instant Form I-360 on July 24, 2012. The director subsequently issued two Requests for Evidence (RFEs) of the petitioner's good moral character and good-faith entry into the marriage, among other issues. The petitioner

---

<sup>1</sup> Name withheld to protect the individual's identity.

responded with additional evidence which the director found insufficient to establish the petitioner's eligibility, and denied the petition. The petitioner, through counsel, appealed the director's decision, submitting a Form I-290B Notice of Appeal, and additional evidence.

We review these proceedings *de novo*. Upon a full review of the record, including the documents provided on appeal, we concur with the director that the petitioner has not established his good moral character. We further find that the petitioner has not complied with section 204(g) of the Act and is ineligible for the exception at section 245(e) of the Act.<sup>2</sup>

### *Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in July 2009 and ending in July 2012). In response to the director's first RFE, the petitioner submitted a letter from the Colorado Department of Public Safety, dated October 23, 2012, in reference to [REDACTED]. The letter stated that no Colorado arrest record was located for the name provided. However, subsequent to the petitioner's response to the first RFE, he submitted an additional filing with court records from the City and County of Denver, Colorado County Court, indicating that he was found guilty of driving under restraint (Colorado Revised Statute 42-2-138(1)(a)) in January 2009, and leaving the scene of an accident with property damage (Colorado Revised Statute section 42-4-1602) in January 2012. Each of these records identifies the petitioner under a different spelling of his name. The petitioner also provided a personal affidavit, but he did not address his criminal record or otherwise discuss his good moral character in the statement. In addition, the petitioner provided a letter from [REDACTED], the petitioner's patient navigator and medical assistant, in which she provides a character reference for the petitioner, as well as a character reference from his friend, Mr. [REDACTED].

In the second RFE, the director requested that the petitioner submit additional law enforcement clearances for all of the petitioner's "aliases." The director further noted evidence in the petitioner's administrative record that indicated that he had been arrested for or charged with crimes other than those for which documentation had been provided. In response to the RFE, the petitioner provided an unsigned copy of the letter from Ms. [REDACTED], and a letter from his friend, [REDACTED] who stated that he has known the petitioner since childhood, but did not provide any statements regarding the petitioner's moral character.

The director determined that the petitioner did not establish his good moral character because the name search results that he submitted did not include all of his aliases and a personal affidavit

---

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 (9<sup>th</sup> Cir. 2003).

attesting to his good moral character and criminal history.

On appeal, the petitioner provides a personal statement dated November 22 [no year], in which he states that he has only utilized one name and he does not have any aliases, and acknowledges that his name is often spelled wrong. In support of his statement, the petitioner submits a copy of his Mexican consular identification card, and an additional letter from the Colorado Department of Public Safety dated November 25, 2013, indicating that there is no arrest record for the name provided by the petitioner. The name provided is a different version than that provided on his Mexican identification card. The petitioner also provided another letter from his friend [REDACTED] which does not address his moral character, and a letter from acquaintance [REDACTED] who briefly states that the petitioner has unimpeachable conduct. In addition, the petitioner provided two letters from [REDACTED] and a letter from [REDACTED] all stating that the petitioner is hard-working and reliable.

The record shows that the petitioner has two first name and two last names that are used throughout the record with differing spellings and with differing configurations. In light of the conflicting information in the record regarding the petitioner's criminal history (i.e., a state clearance letter indicating no criminal record, and the petitioner's submission of conviction records), the director was correct in requesting additional evidence of the petitioner's criminal history. Throughout the record, the petitioner's name appears in over ten distinct spellings and/or configurations, several of which are listed on the first page of this decision; however, the petitioner has provided a state-issued criminal background check for only two of the aliases.

As stated at 8 C.F.R. § 204.2(c)(2)(v), the petitioner bears the burden to establish that he is a person of good moral character by submitting an affidavit regarding his criminal record, supported by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. The record contains no self-affidavit, however, or evidence that state-issued background checks were conducted under all of the differing spellings of the petitioner's name, or that the petitioner's criminal history was checked through submission of his fingerprints. Accordingly, the petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

*Section 204(g) of the Act*

Beyond the director's decision, the instant self-petition cannot be approved pursuant to section 204(g) of the Act unless the petitioner establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the

qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(A) states that the request for the bona fide marriage exemption must be made in writing, and must be supported by documentary evidence establishing eligibility for the exemption. Although in the June 21, 2013 RFE the director notified the petitioner of the requirement to provide a request for the bona fide marriage exemption in writing, the petitioner did not submit a written request.

Neither the petitioner's personal affidavits, nor the third-party affidavits, provide probative information about how the petitioner met M-E-, their courtship and decision to marry, their wedding ceremony, or their shared residences and experiences beyond the details of the abuse. The petitioner submitted evidence of a lease and joint automobile insurance from 2010. The petitioner also provided documentation of a joint bank account opened in 2010, and utility bills from 2011 and 2012; however, he did not provide documentation from the period when the couple married in [REDACTED] nor did he provide an explanation as to why documentation for the first year of his marriage was unavailable. In the absence of probative testimony from the petitioner regarding the bona fides of his marriage, the documentation provided from later in the relationship does not establish the petitioner's intent at the time that he entered into marriage with M-E- in July [REDACTED]. The petitioner provided copies of the couple's federal income tax returns from 2009 and 2010, stating their filing status as "Married filing jointly." However, in an affidavit dated October 27, 2012, the petitioner asserted that on one of the tax returns he added M-E-'s son as a dependent, at M-E-'s request, "for \$500." Thus, it is not apparent that the information contained in the petitioner's tax returns accurately reflects his and M-E-'s living situation for the years filed. In addition, the photographs provided by the petitioner are not described.

The petitioner failed to request for the bona fide marriage exemption, and the documentation he submitted does not establish that his marriage to M-E- was bona fide by clear and convincing evidence. He has therefore not established eligibility for the bona fide marriage exemption at section 245(e) of the Act, and consequently his self-petition is barred by section 204(g) of the Act.

#### *Eligibility for Immediate Relative Classification*

Beyond the director's decision, because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

*Conclusion*

The petitioner has not established his good moral character, complied with section 204(g) of the Act, or meets the exception at section 245(e) of the Act. He is consequently ineligible for classification under section 204(a)(1)(A)(iii) as an abused spouse of a U.S. citizen.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed. The petition remains denied.