

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **SEP 25 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center director, (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 entered into marriage with his wife in good faith, that he resided with her during their marriage, and that he is a person of good moral character.

On appeal, counsel submits a brief.

*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 101(f) of the Act, 8 U.S.C. § 1101(f), states, 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 –

...

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

\* \* \*

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...

Section 212(a)(2)(A)(i)(I) of the Act further states, in pertinent part, that:

Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States . . .

(2) Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 204(a)(1)(C) of the Act states:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii),(A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who claims he entered the United States in September of 1995 without inspection, admission or parole. The petitioner married R-C-<sup>1</sup>, a U.S. citizen, in Colorado on December 10, 2004. The petitioner filed the instant Form I-360 self-petition on January 7, 2011. The director subsequently issued a Request for Further Evidence (RFE) and a Notice of Intent to Deny (NOID) the petition for failing to establish, among other things, the petitioner's residence with his wife, his good faith marital intentions, and his good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient. The director denied the petition and counsel appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Residence*

The director determined that the petitioner did not establish that he resided with R-C- during their marriage because the record contained inconsistencies that were not explained. The record reflects that the petitioner, in his motion to change venue submitted to the Denver, Colorado Immigration Court in December of 2006, represented to the Court that he resided in California. This motion was granted and the petitioner's removal proceedings were transferred to the Los Angeles, California Immigration Court where the petitioner continued to represent to the Immigration Court that he resided in California.<sup>2</sup> In the instant self-petition, the petitioner has maintained that he does not live in California and has lived in Colorado for the last ten years. In the NOID, the director stated that this inconsistency casted doubt upon the petitioner's joint residency with R-C- during their marriage and requested that the petitioner provide a detailed account of their residential history along with supporting documents if available. The petitioner's response included a detailed statement regarding the dates and locations of his residence with R-C- as well as joint documents. Further, the record contains a Colorado Police

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

<sup>2</sup> The record reflects that a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court, Form EOIR-28, signed and dated by the petitioner on May 6, 2010, listed a Los Angeles, California residential address.

Department Domestic Violence Statement Form dated June 22, 2010, that showed the same address for the petitioner and R-C-.

Upon de novo review, the relevant evidence demonstrates that the petitioner resided with R-C- during their marriage. Notwithstanding the fact that the petitioner continuously represented to the Immigration Court that he resided in California, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with R-C-.<sup>3</sup> The petitioner's statements are supported by numerous jointly-addressed documents as well as other evidence in the record showing his shared addresses with R-C-. When viewed in the aggregate, the relevant evidence shows that the petitioner resided with R-C- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

In his affidavit, the petitioner described meeting R-C- through his cousin who was dated R-C-'s roommate. The petitioner described the four of them going out to watch movies and having dinner together. The petitioner also stated he spent a lot of time with R-C-'s children who lived with her and that he felt like he had a complete family. The petitioner recounted that they did not have plans to get married but did so suddenly, in a small church. The petitioner submitted joint documents and numerous letters from friends stating that they knew the petitioner and R-C- as a married couple and that he married her in good faith.

The director nonetheless determined the petitioner did not marry his wife in good faith because the submitted marriage certificate indicated that the petitioner and R-C- were married by a municipal court judge, and not in a religious ceremony as stated by the petitioner in his affidavit. The director further determined that the petitioner did not submit an original and certified marriage certificate. On appeal, counsel states that the petitioner and R-C- were married in a municipal courthouse as stated on the marriage certificate. He further states that this error was an oversight by counsel's office and argues that this inconsistency is immaterial. On appeal, counsel submits a declaration from his personal assistant stating that she misunderstood the petitioner when helping him write his affidavit. Counsel's assistant also states that an original, certified copy of the petitioner's marriage certificate was submitted as requested, contrary to the director's denial. A review of the record shows that in response to the NOID, the petitioner submitted an original certification by the [REDACTED] County Clerk and Recorder bearing the [REDACTED] County, Colorado seal and attached with a copy of the petitioner's registered marriage license. As this minor inconsistency has been explained and the requested document provided, the preponderance of the evidence submitted below and on appeal is sufficient to demonstrate that the petitioner married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Nonetheless, the appeal cannot be sustained because the petitioner has not overcome the remaining ground for denial.

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<sup>3</sup> Although the petitioner's Form EOIR-42B Application for Cancellation of Removal lists Los Angeles, California as his place of residence, the supporting documents subsequently submitted to the Immigration Court show Colorado addresses for the petitioner.

*Good Moral Character*

The director determined that the petitioner failed to establish that he is a person of good moral character because in June of 2010, the police arrested the petitioner after finding probable cause existed that he committed domestic violence against his wife. The director also stated that he could not make a determination regarding the petitioner's good moral character because the petitioner did not submit evidence of this for his residence in California. 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 September 2008 and ending in September 2011).

The petitioner initially submitted an incomplete record search of the Colorado Bureau of Investigation's database that showed that he was arrested four times but did not state the final disposition of each arrest. The petitioner also submitted two brief letters of support from friends. In response to the NOID, the petitioner submitted: a summary of his residential addresses since 2004 as evidence that he has only resided in Colorado for the last ten years; court documents from the ██████████ County, Colorado Combined Court showing that the petitioner was convicted of driving without insurance on November 30, 2005; court documents from the ██████████ Colorado Municipal Court showing that the petitioner was convicted on February 9, 2011 of domestic violence conduct – unreasonable noise and sentenced to 364 days of unsupervised probation; and a letter from the California Bureau of Criminal Information and Analysis, dated November 17, 2011, showing that as of the date of the fingerprint search results, the petitioner did not have a criminal history in California.

On appeal, counsel asserts that the petitioner has provided all the requisite local police clearances as well as the final disposition for his arrests. Counsel further asserts that the petitioner's 2011 conviction is not a crime involving moral turpitude (CIMT), and even if it were, the petitioner would be eligible for the petty offense waiver.<sup>4</sup> Although the petitioner has established that none of his convictions pose a per se bar to a finding of his good moral character under section 101(f) of the Act, he has not demonstrated by a preponderance of the evidence that he has rehabilitated and his unlawful acts adversely reflect upon his moral character. The petitioner has not explained or even acknowledged his 2011 conviction for domestic violence conduct – unreasonable noise and has only briefly addressed a “minor arrest” in his life. Consequently, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and has not overcome this ground for denial.

*Conclusion*

On appeal, the petitioner has overcome the director's determination that he did not establish his joint residency with R-C- and entry into their marriage in good faith. However, the petitioner has failed

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<sup>4</sup> As the petitioner's conviction for unreasonable noise is not a CIMT, we need not reach counsel's claim that the petitioner is eligible for the petty offense waiver.

to establish his good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *See* 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.