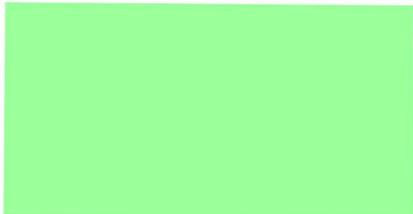


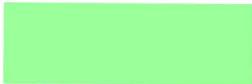


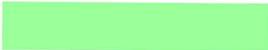
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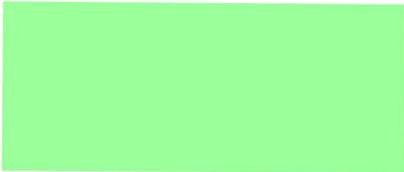
Date: **SEP 26 2014**

Office: VERMONT SERVICE CENTER File: 

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 Vermont Service Center Acting 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 under 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner married his wife in good faith, and that the petitioner was a person of good moral character.

*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 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)(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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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.

\* \* \*

(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. . . . 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.

*Facts and Procedural History*

The petitioner is a citizen of New Guinea who claimed to have entered the United States as a B-2 nonimmigrant visitor on September 21, 1999. The petitioner married S-J-<sup>1</sup>, a U.S. citizen, on July 4, 2008. The petitioner filed the instant Form I-360 on September 30, 2011. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's entry into the marriage in good faith and the petitioner's good moral character. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's ground for denial.

*Entry into the Marriage in Good Faith*

In his initial affidavit, the petitioner stated that he first met S-J- in 2000, and had a romantic relationship with her that was "on and off." The petitioner did not further describe his first meeting with S-J-, their courtship, his decision to marry, their wedding ceremony, or their joint residence and shared experiences, apart from the abuse.

In addition to his own affidavit, the petitioner submitted affidavits from his friend, [REDACTED] and his pastor, [REDACTED]. Ms. [REDACTED] stated that the petitioner and S-J- "seemed very happy together." Mr. [REDACTED] stated that the petitioner and his wife attended pre-marital counseling prior to their marriage, and that he performed their marriage ceremony. Neither Ms. [REDACTED] nor Mr. [REDACTED] gave any detailed substantive information about the petitioner's courtship or decision to marry S-J-.

The petitioner also submitted several joint documents. There is a general letter from [REDACTED] a blank check from [REDACTED] and information from [REDACTED] listing the joint checking account as having been opened on July 30, 2008. However, the petitioner has provided no evidence from [REDACTED] showing actual use of the joint bank account. The lease agreements submitted by the petitioner for 2008 and 2009 list the petitioner and his wife as occupants, but are not signed by the petitioner and S-J-. The record also contains an assignment of vehicle ownership, the petitioner's 2008 Form 1099-MISC, and a credit report, but these documents provide no probative information of the petitioner's intentions in marrying S-J-. The petitioner also provided a photograph of the couple pictured together; a photocopy of a document dated June 8, 2008 which appears to be from their premarital counseling; and greeting cards to the couple and to the petitioner from S-J-. The photograph of the couple pictured together is on an unidentified date and occasion. Although these document demonstrate a shared mailing address and provide insight into the couple's relationship, without a detailed account from the petitioner about his relationship with S-J-, they fail to establish the petitioner's good faith intentions in marrying S-J-.

On appeal, the petitioner submits affidavits from his friends, [REDACTED] [REDACTED] his pastor to explain the discrepancies noted by the director regarding the petitioner's claimed

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

residences. In reference to the petitioner's good-faith claim, although four of the affiants stated that the petitioner loved S-J- and had a bona fide marriage, they did not provide any probative details about their observations of the petitioner's courtship or marital relationship with S-J-.

In addition to the affidavits from others, the petitioner himself submits a new affidavit to establish that he married S-J- in good faith. The petitioner states that he was attracted to S-J- when they first met at their apartment complex in 2000, that they "started hanging out with each other" at the apartment complex, and moved in together a week after they met. The petitioner further states that they dated for six months before their relationship ended and then reconnected at a club in June 2007, and that he moved in with her again in July. He indicates that at the beginning of 2008, S-J- proposed that they get married and he agreed to get married because he loved S-J-. Regarding their wedding, he states that they had fifty guests and a celebration with family members at a restaurant afterwards. The petitioner did not further describe in detail the first time he met S-J-, their reconnection, their courtship, his decision to marry, his feelings for S-J-, their wedding ceremony and reception, or their joint residence and shared experiences.

The petitioner states in his affidavit that he does not have evidence of a shared residence for financial reasons and because S-J- was very controlling. He states that she kept utility bills in her name and closed their joint bank account with [REDACTED] without his knowledge. He also states that he could not afford medical insurance and did not need car insurance because he did not own a car. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). The petitioner's statements about the first time he met S-J-, their reconnection, their courtship, his decision to marry, his feelings for S-J-, and their wedding ceremony and reception are cursory. In the absence of a detailed probative account from the petitioner about his relationship with S-J-, the evidence submitted below and on appeal is not sufficient to establish that the petitioner married S-J- in good faith. When viewed in the totality, the preponderance of the evidence fails to demonstrate that the petitioner entered into marriage with S-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *The Petitioner Lacks Good Moral Character*

The petitioner submitted his computerized criminal history record, dated September 16, 2011. It reflects that on June 22, 2006, the petitioner was convicted of disorderly conduct, a misdemeanor of the fourth degree, under section 2917.11A of the Ohio Revised Code Annotated (Ohio Rev. Code Ann.).<sup>2</sup> The petitioner was sentenced to serve five days in jail. On November 27, 2006, the

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<sup>2</sup> Ohio Rev. Code Ann. § Sec. 2917.11(A) provides, in pertinent part, that:

Sec. 2917.11. (A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

petitioner was convicted of driving under the influence of alcohol or drugs in violation of the Ohio Rev. Code Ann. § 4511.19A1. He was fined \$250 and sentenced to serve 180 days in jail, however, 175 days were suspended.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

For the purposes of this Chapter – 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 . . . subparagraphs (A) . . . of section 212(a)(2) . . . .

\* \* \*

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. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

To determine whether a crime involves moral turpitude, a categorical approach is first applied to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Yeremin v. Holder*, 738 F.3d 708, 715 (6<sup>th</sup> Cir. 2013)(citing *Ruiz-Lopez v. Holder*, 682 F.3d 513, 518 (6th Cir. 2012). If that evaluation does not resolve the inquiry because the statute includes some conduct that involves moral turpitude and other conduct that does not, we examine the record of conviction to determine whether the specific offense for which the petitioner was convicted qualifies as a crime involving moral turpitude. *Id.*

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- (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
  - (2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;
  - (3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response;
  - (4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;
  - (5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

Assault and battery offenses may be crimes of moral turpitude if they involved aggravating factors such as the use of a deadly weapon, the intentional infliction of serious bodily injury on another, and the infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child or a domestic partner. *Matter of Sanudo*, 23 I&N Dec. 968, 971-972 (BIA 2006).

The criminal statute under which the petitioner was convicted punishes some conduct that involves moral turpitude and other conduct that does not. For example, a person can be convicted for disorderly conduct for being loud and making “the gesture of the middle finger” to police officers. *State v. Wood*, 679 N.E.2d 735, 740 (Ohio App. 11th Dist. 1996). A person can also be convicted for having knowingly caused or attempted to cause physical harm to a spouse. *State v. Stuber*, 593 N.E.2d 48, 50 (Ohio App. 3d Dist. 1990).

In this case, the full range of conduct encompassed by section 2917.11(A) includes some conduct that involves moral turpitude and other conduct that does not. We cannot make a proper determination of whether the specific conduct for which the petitioner was convicted qualifies as a crime involving moral turpitude because the petitioner has not provided his record of conviction showing the specific subsection under which he was convicted. However, even without this documentation the record still shows that the petitioner lacks good moral character for other reasons. The petitioner does not discuss his two convictions and we cannot determine whether either offense was committed under extenuating circumstances. Unless a self-petitioner establishes extenuating circumstances, he or she will be found to lack good moral character if he or she committed or was convicted of unlawful acts that adversely reflect upon his or her moral character, although the acts do not require an automatic finding of lack of good moral character. 8 C.F.R. § 204.2(c)(1)(vii). Primary evidence of good moral character is the self-petitioner’s affidavit. 8 C.F.R. § 204.2(c)(2)(v). Although the petitioner submitted two affidavits, he does not discuss his crime of disorderly conduct or driving under the influence of alcohol or drugs in either statement.

On appeal, counsel contends that the petitioner’s good moral character is demonstrated by the affidavits submitted on his behalf. The letters state that the petitioner is honest, nonviolent, and respectful of others; however, the authors do not indicate that they know of the petitioner’s criminal record, and accordingly do not demonstrate that they can knowledgeably attest to his good moral character, as the regulation requires of supporting affidavits. 8 C.F.R. § 204.2(c)(2)(v) (including consideration of “affidavits from responsible persons who can knowledgeably attest to the self-petitioner’s good moral character”).

The relevant evidence in the record shows that the petitioner was convicted of unlawful acts which adversely reflect upon his character and fall below the standards of the average citizen in the community. The petitioner’s acquaintances and friends commend the petitioner’s character, but they do not indicate any awareness of the petitioner’s criminal history, and therefore cannot knowledgeably attest to his good moral character. The petitioner does not discuss his two convictions and we cannot determine whether either offense was committed under extenuating circumstances. Consequently, regardless of whether the petitioner’s disorderly conduct conviction was for a crime involving moral turpitude, 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.

The record does not establish that the petitioner married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.