



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-A-A-

DATE: DEC. 21, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act), § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The matter will be remanded to the Director for further proceedings.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse. On appeal, the Petitioner submits a brief and additional evidence.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 provides, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

(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.

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:

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal

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steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Pakistan who last entered the United States on October 19, 2013, as a B-1 nonimmigrant visitor. He married A-M-¹ a U.S. citizen, on [REDACTED] 2013, in [REDACTED] Indiana. He filed the Form I-360 on September 8, 2014. The Petitioner and A-M- were divorced on [REDACTED] 2014.

The Director issued a request for evidence (RFE) of, among other things, the battery or extreme cruelty the Petitioner suffered during his marriage to A-M-. The Petitioner responded with additional evidence, which the Director found insufficient to establish that the Petitioner was battered or subjected to extreme cruelty during his marriage. Therefore, the Director denied the petition.

We review these proceedings *de novo*. The preponderance of the evidence demonstrates that the Petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse. Therefore, that portion of the Director's decision will be withdrawn. However, the Petitioner has not submitted all necessary documentation to establish his good moral character. Therefore, we will remand the matter to the Director for further action regarding the Petitioner's good moral character.

¹ Name withheld to protect the individual's identity.

III. BATTERY OR EXTREME CRUELTY

A preponderance of the evidence establishes that the Petitioner was battered or subjected to extreme cruelty by A-M- during their marriage. The Director's conclusion to the contrary will be withdrawn.

On appeal, the Petitioner contends that the Director did not consider the psychological evaluation he submitted in support of his claim. The Petitioner also alleges that the Director inappropriately found that certain evidence had little probative value and that the Petitioner had not submitted sufficient evidence of battery or extreme cruelty. He further states that he was unaware that the Director needed to have detailed information about the abuse that he suffered, and that it was difficult for him to write in detail regarding the abuse in his personal declaration, and that it was only in the sessions with his therapist that he was able to provide additional details regarding the abuse.

The Petitioner provides an updated personal declaration on appeal. The updated declaration is substantially similar to the declarations he previously submitted, but contains some additional detail. He states, in pertinent part, that after he and A-M- wed, they lived together at A-M-'s family's home in Indiana, where he "felt captive" because he had no car or access to public transportation. He asserts that A-M- promised to move with him to a different apartment in one month, but did not do so. The Petitioner was also financially dependent on A-M- and her family because he lacked work authorization. He recalls an incident that occurred sometime between December 25 and 27, 2013, when he went to a movie with A-M- and her younger sisters. He states that he became concerned that the movie was inappropriate for A-M-'s sisters and expressed his concerns to A-M-, but she told him to be quiet. The Petitioner recounts that he eventually left the theater, but A-M- followed him to the lobby, where she pushed him against the wall, held her hand on his chest, and yelled at him in front of her sisters and the other theater patrons.

The Petitioner also contends that A-M- used to bite his fingers, approximately three times per month, without provocation, causing him pain and leaving bite marks. He also claims that, one weekend after January 15, 2014, A-M- repeatedly slapped him and poked him in the ear with her finger while they were lying in bed, preventing him from sleeping. The Petitioner indicates that, when he attempted to leave the room, A-M- blocked his exit. He states that A-M- engaged in similar behaviors on other occasions, poking him in the ear with her finger, scratching him, and slapping him in their bed at night, and kicking him when he attempted to leave. He also asserts that A-M- used to call him names and insulted his height and complexion in conversations with others. Additionally, the Petitioner states that A-M- refused to consummate their marriage while, at the same time, pressuring and coercing him to engage in other sexual activities with which he was uncomfortable. He explains that A-M- threatened to leave him if he did not obey her, and became angry and would not speak with him if he resisted or disagreed with her. According to the Petitioner, he did not previously realize that it was necessary for him to provide details regarding the sexual abuse he experienced during his marriage to A-M-. He states that he feels too ashamed to write the details of the abuse in his own declaration, and requests that we refer to the 2015 psychological evaluation he submits on appeal.

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The Petitioner also claims that he had an airline reservation to return to Pakistan prior to the expiration of his visitor visa, but that A-M- canceled his reservation without notifying him, causing him to feel that he was "under her possession and control." He states that A-M- initially refused to assist him with filing an immigration petition, and although she eventually agreed, she intentionally filed an incomplete Form I-130 petition, which was rejected. At that time, A-M- told the Petitioner, "You're mine and you can't leave me now." The Petitioner further states that A-M- frequently left him alone at her family's home for long periods without transportation and that he was subject to household rules that did not apply to the rest of the family. The Petitioner indicates that he was not permitted to leave his bedroom after 2:00 a.m. or when A-M-'s brother's wife was in the kitchen or living room, and he was not permitted to speak with A-M-'s sisters. He also claims that A-M- was engaged in sexual conversations with several men on the internet, and that, when he discovered this fact, A-M- yelled at him and scratched him with her fingernails. A-M-'s violent reaction toward the Petitioner when he discovered that she was engaged in sexual conversations with several men on the internet qualifies as battery or extreme cruelty when considered together with the other evidence of record. Additionally, he alleges that, when he saw A-M- at a restaurant with another man, her mother pressured the Petitioner to remain in the marriage with A-M-. The Petitioner also states that A-M- and her brother repeatedly threatened to take him to court and have him deported. He further states that A-M- stole his personal belongings and did not give him access to important documents, such as their marriage certificate and immigration notices. He claims she also did not provide him with support when he was ill. He indicates that A-M-'s behavior and the actions of her family members caused extreme stress and humiliation for him, caused him to feel hopeless and depressed, and negatively affected his personal relationships and his professional life.

The Petitioner also provides on appeal a Psychosocial Re-Evaluation from [REDACTED] Licensed Clinical Social Worker, dated June 2, 2015. This evaluation is similar to Ms. [REDACTED] evaluation of September 1, 2014, which was submitted with the Form I-360, but contains additional detail based on additional counseling sessions with the Petitioner. Ms. [REDACTED] asserts that, based on the Petitioner's reports to her, she believes that "[A-M-] and her family attempted to control [the Petitioner] through a pattern of continuous emotional, sexual and physical abuse." She also indicates that the Petitioner had great difficulty recalling and speaking about the abuse he experienced due to his feelings of shame. She asserts that the Petitioner was unable to discuss the abuse in detail until she used "a cognitive interview technique and several memory-enhancing strategies."

Ms. [REDACTED] states that, according to the Petitioner's reports, A-M- pushed him against the wall and yelled at him at a movie theater sometime between December 25 and 27, 2013. Additionally, the Petitioner told Ms. [REDACTED] that, on January 18, 2014, A-M- poked him in the ear and slapped him on the ear and face while they were in bed, and then blocked his exit from the bedroom and verbally taunted him. Also, Ms. [REDACTED] states that, during May 2015 counseling sessions, the Petitioner informed her about the sexual abuse he experienced. According to Ms. [REDACTED] describing the sexual abuse to her was very difficult for the Petitioner, and that he was "clearly suffering as he reported these facts" to Ms. [REDACTED]. She states that he reported that A-M- pressured and forced him to engage in sexual acts with which he was not comfortable, and that when he resisted, A-M- told the Petitioner he was "not a man," threatened to leave him and to stop speaking with him, and cried and

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accused him of not loving her. The Petitioner told Ms. [REDACTED] that the forced sexual acts caused him physical pain and extreme shame for him, and that A-M- continued her behavior despite knowing that the Petitioner was in pain. Additionally, Ms. [REDACTED] states that, according to the Petitioner, A-M- verbally abused him in front of her family, calling him "crazy" and "stupid," insulting his height and comparing him to other men with whom she was having extramarital affairs, making derogatory remarks about his skin color and ethnicity, and using derogatory terms to describe him when speaking with her sisters in his presence. Ms. [REDACTED] also indicates that, according to the Petitioner's reports, A-M- used her extramarital affairs with other men to humiliate the Petitioner, speaking to the men in front of the Petitioner and making derogatory remarks about the Petitioner during those conversations. Additionally, the Petitioner informed Ms. [REDACTED] that A-M-'s brother threatened to cut him "into little pieces" if he hurt A-M-, and that A-M-'s brother-in-law threatened to "break [his] legs" if he left A-M-. Furthermore, Ms. [REDACTED] claims that the Petitioner reported numerous threats by A-M- and her family to have him deported. Ms. [REDACTED] states that the Petitioner felt trapped in his relationship with A-M-, and that A-M- controlled him by having her mother convince his parents in Pakistan that he was doing well and did not need to go home. Additionally, the Petitioner reported to Ms. [REDACTED] that A-M- threatened to kill herself if he left, and that A-M-'s family members made him feel responsible for A-M-'s wellbeing and guilty if he left the marriage. Ms. [REDACTED] diagnoses the Petitioner with posttraumatic stress disorder, depressive disorder with anxious features, "tension-related shoulder and neck pain," and fear of A-M- and her family.

The Petitioner's own statements regarding his relationship with A-M- are credible, detailed, and probative. The Petitioner provides specific information regarding physical, verbal, and emotional abuse, threats, and controlling behavior by A-M- and her family. The Petitioner discusses specific instances in which A-M- slapped, bit, and kicked him, prevented him from leaving their bedroom, yelled at him, and made insulting comments toward him. He also discusses the pressures and rules A-M- and her family imposed on him in an attempt to control him, states that A-M- hid his immigration documents and other important paperwork, and describes in detail the repeated threats A-M- and her family made toward him regarding his immigration status. Ms. [REDACTED] also provides a consistent, detailed account of the physical, verbal, and emotional abuse the Petitioner experienced, as well as a detailed description of sexual abuse the Petitioner endured. Although the Petitioner's own statements include only vague descriptions of sexual abuse, both the Petitioner and Ms. [REDACTED] provide a credible explanation for his difficulty describing these incidents of abuse, and Ms. [REDACTED] explanation is based on her professional experience and evaluation of the Petitioner over the course of several counseling sessions. The evidence in the record, when considered as a whole, provides a detailed and credible account of the abuse the Petitioner suffered during his marriage to A-M-. The preponderance of the evidence establishes that the Petitioner was battered or subjected to extreme cruelty by A-M-, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. GOOD MORAL CHARACTER

Pursuant to 8 C.F.R. § 204.2(c)(2)(v), a petitioner must submit police clearances, criminal background checks, or similar reports for each locality or state in the United States, and each foreign country, in which he resided for six or more months during the three years immediately preceding

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the filing of the Form I-360. According to the Form G-325A, Biographic Information, he submitted on March 3, 2014, the Petitioner resided in Pakistan until October 2013. Since arriving in the United States, he has resided in [REDACTED] Illinois and [REDACTED] Indiana. He filed the Form I-360 on September 8, 2014. The Petitioner submitted a police clearance letter from the [REDACTED] Police Department, but did not submit such clearances from authorities in Indiana or Pakistan. Therefore, we will remand this matter to the Director for purposes of requesting police clearances from the Petitioner for all localities, states, or foreign countries in which the Petitioner resided for six months or more during the three years immediately preceding the filing of the Form I-360. Upon receipt of the requested evidence, the Director will determine whether the Petitioner is a person of good moral character. Section 101(f) of the Act, 8 U.S.C. § 1101(f); 8 C.F.R. §§ 204.2(c)(1)(vii),(2)(v).

V. CONCLUSION

The preponderance of the evidence demonstrates that the Petitioner was subjected to battery or extreme cruelty by his U.S. citizen spouse during their marriage. However, as the record does not contain the necessary evidence to establish that the Petitioner is a person of good moral character, we must return the matter to the Director for further action.

In these proceedings, the Petitioner bears the burden of proving eligibility for the 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.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of M-A-A-*, ID# 14909 (AAO Dec. 21, 2015)