



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

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

MATTER OF L-A-A-R-

DATE: DEC. 22, 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 United States 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 appeal will be dismissed.

I. APPLICABLE LAW

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.

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:

(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 . . . 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.

The evidentiary guidelines 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.

.....

(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 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.

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(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. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Guatemala, was last paroled into the United States on November 10, 1996. The Petitioner married R-P-,¹ a U.S. citizen, on [REDACTED] 2013, in California. The Petitioner was placed into removal proceedings pursuant to a Notice to Appear issued on April 4, 2003. An immigration judge subsequently issued an order of removal against the Petitioner on December 9, 2011, and the Board of Immigration Appeals (Board) dismissed his appeal on June 20, 2013.

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 11, 2014, based on his relationship with R-P-. The Director subsequently issued a request for evidence (RFE) and a notice of intent to deny (NOID) on the basis that the Petitioner had not established that he is a person of good moral character and that R-P- had subjected him to battery or extreme cruelty during their marriage. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 on the basis that the Petitioner had not established that he was subjected to battery or extreme cruelty by his spouse. The Petitioner appealed the Director's decision. On appeal, the Petitioner submits a brief.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. Beyond the determination of the Director, the Petitioner has also not demonstrated that he is a person of good moral character.² The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

² 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,*

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A. Battery or Extreme Cruelty

The relevant evidence submitted below does not establish that the Petitioner was subjected to battery or extreme cruelty by his spouse during their marriage. In his initial statement, the Petitioner stated that his spouse was under treatment for depression and has been prescribed psychotropic medications which affected their marital relationship. He further indicated that it had become difficult for him to live with R-P- and that he has been forced often to leave their home to keep her from becoming even angrier with him. The Petitioner stated that R-P- has been hostile and aggressive towards him, causing him to be fearful for himself and their son, but did not elaborate about specific incidents demonstrating R-P-'s abusive conduct. In a subsequent statement, the Petitioner recounted the stress and uncertainty he felt of not being able to predict his spouse's "outbursts" and stated that the resulting consequences were "troublesome." He indicated that R-P- has routinely threatened him with deportation and that her open harassment has been destructive to his peace of mind and sense of security. The Petitioner's statements, however, only generally described the claimed emotional abuse by R-P-, and did not provide substantive information about any particular incident of claimed abuse to demonstrate that R-P- battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The record also includes a psychological assessment by Dr. [REDACTED], Ph.D., [REDACTED], which indicated that the Petitioner had been diagnosed with chronic posttraumatic stress syndrome, generalized anxiety disorder, and major depressive disorder. The assessment addresses several incidents in the Petitioner's early life that attributed to the Petitioner's diagnoses, but does not indicate that the diagnoses were caused by or aggravated by the claimed abuse by R-P-. While we do not question Dr. [REDACTED] professional expertise, her assessment provides no substantive information regarding any incident of claimed abuse, and apart from a brief reference to "increased conflict with his spouse," the narrative portion of the assessment does not indicate that the Petitioner ever reported having been abused by R-P-.³

On appeal, the Petitioner asserts that United States Citizenship and Immigration Services (USCIS) did not apply the correct standard of evidentiary review, impermissibly required specific evidence, disregarded his detailed declaration of psychological abuse, and unreasonably presumed that mental or psychological abuse did not satisfy the definition of battery or extreme cruelty for purposes of section 204(a)(1)(A)(iii) of the Act. He further suggests that any evidence of psychological abuse in the record merits approval of the Form I-360.⁴ The Petitioner's assertions are not supported by the

Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

³ The assessment referenced only in conclusion that the Petitioner would be assisted in addressing the "alleged abuse/violence that [he] and his children are being impacted from," but does not specify the abuser or any specific incidents of abuse.

⁴ The Petitioner cites to *Osawe v. Attorney General*, 467 Fed. Appx. 125 (9th Cir. 2012), asserting that the U.S. Court of Appeals for the Ninth Circuit there "upheld the [Board's] dismissal of the Plaintiff's appeal of the denial of his I-360 petition because they found that he did not submit *any* evidence of his claim of psychological spousal abuse." The Petitioner contends that the holding in *Osawe* implies that had the record there contained any evidence of at all of psychological abuse, the Form I-360 would have been approved. The Petitioner's assertion and reliance on *Osawe* is without merit. In the first instance, *Osawe* is an unpublished decision that is not binding on us. Moreover, he

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record. Consideration of any relevant, credible evidence is the evidentiary standard by which USCIS adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The regulations do not require a petitioner to submit primary, corroborative evidence to satisfy this evidentiary standard. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i) (“The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable.”). However, the evidentiary burden is not equivalent to the standard of proof. As in all immigrant visa petitions, the petitioner must still demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Thus, contrary to the Petitioner’s assertion, the mere submission of relevant evidence may not always suffice to establish a petitioner’s burden of proof.

Based on our review, the record demonstrates that the Director applied the “any credible evidence” standard to consider the probative value of all of the Petitioner’s evidence of claimed psychological and emotional abuse and that the Director properly exercised discretion in determining the evidentiary weight of such evidence to conclude that the Petitioner did not demonstrate by a preponderance of the evidence the requisite battery or extreme cruelty. As discussed, apart from generally asserting that R-P- was abusive, the Petitioner’s statements lacked probative details and provided no substantive information regarding any specific incident of claimed abuse by R-P-, contrary to the Petitioner’s contentions on appeal. The remaining evidence of abuse, namely Dr. [REDACTED] evaluation, was similarly lacking, and consequently, the Director properly found that the Petitioner’s evidence was insufficient to establish the requisite battery or extreme cruelty. Accordingly, upon *de novo* review of the record in its entirety, the Petitioner has not established that R-P- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Good Moral Character

Beyond the determination of the Director, the instant petition is also not approvable because the record demonstrates that the Petitioner lacks good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in pertinent part, 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.” The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that:

mischaracterizes *Osawe*, in which the denial of a Form I-360 was not the basis of the appeal as the Petitioner contends. Rather, the Ninth Circuit upheld the denial of *Osawe*’s request for a continuance of his removal hearing which had been based on a pending Form I-360 petition before USCIS. The court there concluded that the petitioner did not establish substantial prejudice resulting from the denial of his request for a continuance to support his due process claim where there was no evidence in the record at all establishing *Osawe*’s *prima facie* eligibility the underlying Form I-360. *Osawe*, 467 Fed. Appx. at 128. Contrary to the Petitioner’s assertion, *Osawe* is not applicable to these proceedings and lends no support to his assertion that any evidence may establish the requisite battery or extreme cruelty in the form of psychological or mental abuse.

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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. . . .

According to Dr. [REDACTED] psychological assessment, the Petitioner reported that he held the position of [REDACTED] in the Guatemalan military and that he became aware that the military group of which he was a member was participating in corrupt illegal activities. The record of the Petitioner's removal proceedings further disclosed that the immigration judge, upheld on appeal by the Board, determined that the Petitioner was subject to the "persecutor bar" to asylum and withholding of removal under sections 208(b)(2)(A)(ii) and 241(b)(3)(B)(i) of the Act respectively, because the evidence of record indicated that his involvement as an "investigator" in the Guatemalan military resulted in the imprisonment of at least one person and that he had been involved in the disposal of bodies of people killed by his superior. See Board Decision, dated June 20, 2013.

The Petitioner bears the burden of proof in these proceedings to establish his eligibility. *Matter of Otiende*, 26 I&N Dec. at 128. Here, the Petitioner's statements do not address the adverse information in the record regarding his role and actions while serving in the Guatemalan military or the application of the persecutor bar against him in his removal proceedings based on his involvement in the military. Accordingly, the record indicates that the Petitioner engaged in unlawful acts and conduct that falls below the average citizen in the community and adversely reflect upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Therefore, the Petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's ground for denial as he has not established that he was subjected to battery or extreme cruelty by his spouse. Beyond the decision of the Director, the Petitioner has also not established that he is a person of 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 eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met. The appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of L-A-A-R-*, ID# 16154 (AAO Dec. 22, 2015)