



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

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

MATTER OF G-V-P-

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:

(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 United States in the past.

(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.

....

(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 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.

(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.

(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.

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II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Ukraine, last entered the United States on September 21, 1999, as a nonimmigrant visitor. The Petitioner married J-P-¹, a U.S. citizen, on [REDACTED] 2012, in New York. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 23, 2014, based on her relationship with J-P-. The Director subsequently issued a notice of intent to deny (NOID), notifying the Petitioner that she had not established her good moral character as the record indicated that she had provided false testimony under oath to obtain an immigration benefit, thus statutorily barring a finding of her good moral character under section 101(f)(6) of the Act. The NOID further advised the Petitioner that the record did not establish her good faith marital intentions in entering into marriage with J-P-, their joint residence, and that J-P- had subjected her to battery or extreme cruelty. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner filed the instant appeal. On appeal, the Petitioner submits a brief and additional evidence.

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 grounds for denial. The appeal will be dismissed for the following reasons.

A. Good Moral Character

The Petitioner has not established her good moral character as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act. The Director found that the Petitioner was statutorily barred from establishing her good moral character under section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6). Section 101(f)(6) of the Act prescribes, in pertinent part, that no person shall be found to have good moral character if he or she "has given false testimony for the purpose of obtaining any benefits under th[e] Act." Although the record indicates that the Petitioner and her spouse, J-P-, were interviewed by immigration officers on October 22, 2013, in connection with the Form I-130, Petition for Alien Relative, that J-P- filed on the Petitioner's behalf and that during the interview, the Petitioner offered testimony that conflicts with later offered facts, there is insufficient evidence in the record to support the Director's finding that the Petitioner is barred under section 101(f)(6) of the Act from establishing her good moral character, and this portion of her decision is withdrawn.

However, the Petitioner has not established that she is a person of good moral character. The record discloses that the Petitioner was arrested and charged with Forgery and Passing Bad Checks (a felony of the fourth degree) on [REDACTED], 2007, in Ohio. The conviction record the Petitioner submitted does not adequately establish under which statute she was convicted, but seems to show that the Petitioner was convicted of Attempted Passing Bad Checks on [REDACTED] 2007, for

¹ Name withheld to protect the individual's identity.

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which she was sentenced to 180 days. The record does not contain any arrest reports or the full record of conviction, including any plea agreements or charging documents, to demonstrate the underlying circumstances of her arrest and conviction. The record is consequently insufficient to determine whether or not this conviction was for a crime involving moral turpitude. Furthermore, aside from briefly referencing the resolution of her 2007 arrest in her statement responding to the Director's NOID, the Petitioner does not address or discuss, below or on appeal, the circumstances of her arrest and conviction, her rehabilitation, or any remorse she may feel. The Petitioner bears the burden in establishing her eligibility by a preponderance of the evidence in these proceedings. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As the Petitioner has not submitted sufficient evidence to show that her conviction was not for a crime involving moral turpitude, she has not met her burden of demonstrating her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

B. Joint Residence

The relevant evidence in the record does not demonstrate that the Petitioner resided with her spouse, J-P-, as required. The Petitioner asserted on her Form I-360 that she resided with J-P- from May 2013 to December 2013. However, the Petitioner's multiple statements below and on appeal do not provide a coherent history and timeline of her joint residences with J-P- or describe in any probative detail the couple's shared residences. The Petitioner's written statement is also inconsistent with the supporting documentation in the record. For instance, the Petitioner's initial statement and her Form G-325A, Biographic Form, dated October 1, 2014, both indicated that after their marriage, she and J-P- moved in together in [REDACTED] New York, in April 2013 and then they moved to [REDACTED] Massachusetts, in October 2013. However, in an earlier Form G-325A relating to her 2013 Form I-485, Application to Register Permanent Residence or Adjust Status, the Petitioner stated that she resided in [REDACTED] beginning in December 2012 and never indicated that she had ever resided in [REDACTED] New York. Similarly, she listed the [REDACTED] address as her residence on her Form I-485, filed in July 2013, contrary to the information in her 2014 Form G-325A and her claim now that she and J-P- were still residing in [REDACTED] New York, at that time.

The Petitioner's documentary evidence of joint residence raises additional inconsistencies. The joint homeowner's policy issued on June 25, 2013, for the [REDACTED] residence conflicts with the Petitioner's 2014 Form G-325A, which indicated that she was living in [REDACTED] at that time and only moved to that address in October 2013. Several of the couple's joint bank account statements from April 2013 through October 2013 list their address as the [REDACTED] address. As noted, this is inconsistent with the Petitioner's 2013 Form G-325A in which she did not list the [REDACTED] address as her residence at all and instead had asserted that she had been residing in the [REDACTED] residence since December 2012.

In response to the Director's NOID, the Petitioner stated that the discrepancies regarding her residences were due to errors by the notario J-P- obtained who prepared her various 2013 immigration applications and that she was unaware of such discrepancies at the time because she had not reviewed the applications. However, the Petitioner signed the applications and attested to the truth of their contents. Further, the Petitioner's explanation does not account for the discrepancy

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between her documentary evidence, namely the June 2013 homeowner's policy listing the [REDACTED] residence, and the Petitioner's claims in these proceedings and in her 2014 Form G-325A that she was living in [REDACTED] until October 2013. Moreover, the record on appeal still does not provide a consistent account of the Petitioner's shared residences with her husband.

The remaining relevant evidence, including two statements from the Petitioner's friends and a Medicaid letter, do not establish the Petitioner's shared residence with J-P-. The supporting statements from the Petitioner's friends provide no probative details regarding any specific visits to the couple's residences. Further, as discussed, the significant inconsistencies in the Petitioner's statements and other evidence, which she has not overcome on appeal, undermine the probative value of the supporting statements and the documentary evidence in the record. Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Entry into the Marriage in Good Faith

The Petitioner has also not demonstrated that she entered into her marriage with J-P- in good faith. In her initial statement, the Petitioner briefly discussed meeting J-P- at a party in [REDACTED] in February 2012. She stated that she blushed when she noticed him looking at her and that they "clicked" and continued to talk over Skype after the party. The Petitioner recounted maintaining a long distance relationship until they met again in October 2012 when she visited him in New York for three days. The Petitioner recalled meeting J-P-'s daughter and going out to dinner, and stated that J-P- told her that he loved her and wanted to marry her. She stated that originally they were going to marry that same October but got married in [REDACTED] because she became sick. However, in her October 22, 2013, interview for the Form I-130 filed on her behalf, the Petitioner testified that she was introduced to J-P- by a friend in September 2012 through the internet, and traveled² to meet him in person at which time they applied for a marriage license and were married shortly afterwards in [REDACTED] 2012.

In response to the Director's NOID addressing the inconsistencies between the Petitioner's written statement and prior testimony, the Petitioner indicated that she did not recall stating that she met J-P- on the internet during her interview and reasserted that she had gotten to know J-P- over the internet after meeting in early 2012. She attributed the conflicts between her verbal testimony and her written statement to the lack of a Russian/English interpreter during her interview, "unqualified assistance" from a notario J-P- hired, and her "failure to recall some details of [the] relationship." We do not find the Petitioner's explanation reasonable given that it does not explain why during her interview, she provided September 2012 as the date she was introduced to J-P-, if in fact she had met him in person for the first time in February 2012 and did not see him again in person until October 2012, as indicated in her first statement. She also did not explain why if she had difficulties in

² The record indicates that the Petitioner was living in Illinois at the time and the Petitioner has stated that J-P- was living in New York.

communicating with the interviewing officer, she did not request to reschedule the interview so that she could bring an interpreter.

On appeal, the Petitioner submits a supplemental statement which raises additional inconsistencies. In her appeal statement, she again states that she had difficulty understanding the immigration officer in her 2013 interview, but now admits that she did testify at her interview that she met her spouse in September 2012 because that was when she became “really close” to J-P- and “started seeing and talking to him over [S]kype,” although she first “saw him” in February 2012. Again, the Petitioner’s explanation is not persuasive and does not reasonably explain why she testified that she met J-P- in September 2012 if she actually met him in February, or why she initially asserted that she did not remember testifying in such a manner at the immigration interview. Moreover, her assertion that she “saw” J-P- in February but only started seeing and talking to him over Skype in September appears to contradict her prior two statements in these proceedings, in which she indicated that they connected in their first meeting in February 2012 and that they stayed in communication and maintained a long distance relationship thereafter.

Accordingly, our *de novo* review of the record indicates that the Petitioner provided inconsistent and contradictory statements regarding when and how she met her husband. Although she previously testified under oath that she met her spouse in September 2012 on the internet during her Form I-130 interview to establish the requisite *bona fide* marital relationship for that petition, she inconsistently stated in these proceedings that she met her spouse in person during a birthday party in February 2012 and subsequently courted over the internet for many months. The Petitioner’s account of the couple’s initial meeting and courtship is significantly inconsistent with her prior testimony before an immigration officer on her Form I-130 proceedings. The Petitioner has not overcome these discrepancies on appeal and they undermine the credibility of her statements.

Moreover, neither the Petitioner’s initial statement, nor any of her subsequent ones, provide any probative details of the couple’s courtship, wedding proposal, engagement, wedding, or any of their shared experiences, apart from the abuse. Our review of the record also indicates that the two supporting statements from the Petitioner’s friends submitted below are similarly lacking in probative information regarding any shared interactions or occasions they had with the couple to demonstrate the Petitioner’s good faith marital intentions in marrying J-P-.

The documentary evidence in the record, including the Petitioner’s marriage certificate and photographs of the Petitioner and J-P- on the day of their wedding and on other unspecified occasions, are also insufficient to establish the Petitioner’s good faith intentions. The marriage certificate and photographs establish a legal marriage and that a relationship existed between them, but without probative and credible testimony, they do not demonstrate the nature of the relationship between the Petitioner and her spouse to evidence the Petitioner’s good faith marital intentions.

The remaining documentary evidence, including a homeowner’s policy, a Medicaid letter, and joint bank statements provide no insight into the nature of the Petitioner’s marriage and her good faith marital intentions. Additionally, the significant inconsistencies in the Petitioner’s oral and written statements, which she has not overcome on appeal, diminish the probative value of the supporting

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statements of her friends and other documentary evidence. Accordingly, the preponderance of the relevant evidence, considered cumulatively, does not demonstrate that the Petitioner entered into the marriage with J-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

E. Battery or Extreme Cruelty

Our *de novo* review of the record indicates that the Petitioner has also not demonstrated the requisite battery or extreme cruelty to which she claims to have been subjected by J-P- during their marriage. In her initial statement, the Petitioner indicated that her relationship with J-P- was great for the first six months after they moved in together in April 2013. However, she also stated that J-P- was controlling and would not give her money during that period. The Petitioner recounted that a month after moving to Massachusetts, J-P- changed drastically, constantly yelling at her, taking money from their joint account, and making her pay their bills from her savings since she could not work lawfully without work authorization. She stated that J-P- cleared out their account, leaving her unable to pay for food and heat when J-P- stopped providing for her. The Petitioner stated that he also did not pay for her medical expenses and that he constantly screamed at her, called her names, and waved his hand in her face when she responded to his screaming, almost hitting her. The Petitioner stated that she left J-P- in December 2013 and borrowed money to move back to [REDACTED]

The Petitioner's statements, which only provided a general account of the claimed abuse by J-P-, without describing in probative detail any specific incidents of claimed abuse, do not demonstrate that her spouse battered her, or that J-P-'s 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). Her subsequent statements below and on appeal do not further discuss the claimed battery or extreme cruelty by J-P-.

The relevant evidence, including the statements of the Petitioner's two friends and a psychological evaluation, do not establish the requisite abuse. The Petitioner's friend, [REDACTED] described one incident where he witnessed a verbal argument between the Petitioner and J-P- and indicated that one time he saw J-P- "get physical" with the Petitioner, but does not provide any substantive information regarding these or any other incidents of claimed abuse. [REDACTED] discussed generally what the Petitioner recounted to her, but does not otherwise describe any particular incident. In his psychological evaluation, [REDACTED], a clinical psychologist, indicated that the Petitioner continued to suffer negative consequences as a result of her relationship with J-P-, even after their separation, including acute depression and anxiety, day to day survival struggles, immigration difficulties and fear of retribution by J-P-. While we do not question [REDACTED] professional expertise, his assessment relays only what the Petitioner recounted, and provides no further, substantive information regarding any specific incidents of the claimed abuse.

On appeal, the Petitioner maintains that she was a victim of extreme cruelty by her spouse. As discussed, the Petitioner's statements and supporting statements of her friends, lack the probative detail necessary to establish the requisite abuse. Accordingly, the evidence is insufficient to demonstrate that J-P- subjected the Petitioner to battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence, considered cumulatively, does not

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demonstrate that the Petitioner entered into the marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's grounds for denial, as she has not established that she is a person of good moral character, entered into her marriage in good faith, resided with her spouse, and was subjected to battery or extreme cruelty by her U.S. citizen spouse during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of G-V-P-*, ID# 14906 (AAO Dec. 22, 2015)