



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

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

MATTER OF H-M-P-

DATE: DEC. 22, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 Acting Director, Vermont Service Center, denied the petition and we summarily dismissed a subsequent appeal. The matter is now before us on a motion to reopen. The motion will be denied.

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 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 explained 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 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

....

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

The evidentiary guidelines for a self-petition are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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.

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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. . . . 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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of India who entered the United States on March 14, 1998, as a nonimmigrant visitor. The Petitioner married S-L-,¹ a U.S. citizen, on [REDACTED], 2009, in [REDACTED], California. The Petitioner filed the Form I-360 on May 19, 2012. The Director issued a request for evidence (RFE) of, in part, the battery or extreme cruelty the Petitioner suffered during his marriage to S-L-, that he married S-L- in good faith, and is a person of good moral character. Upon review of the Petitioner's response, the Director determined that the record did not establish that the Petitioner was subjected to battery or extreme cruelty by his spouse, entered into the marriage with her in good faith, and is a person of good moral character.

On appeal, we summarily affirmed the decision of the Director, as the Petitioner did not submit a brief or other evidence. The Petitioner timely filed the instant motion to reopen. On motion, the Petitioner submits a brief, copies of documents submitted prior to the Director's decision, and one document not previously submitted, which is a police clearance from the State of California, Department of Justice, Bureau of Criminal Information and Analysis, dated July 31, 2013, stating that the Petitioner does not have a criminal record. We review these proceedings *de novo*.

¹ Name withheld to protect individual's identity.

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III. ANALYSIS

A. Battery or Extreme Cruelty

We find no error in the Director's determination that S-L- did not subject the Petitioner to battery or extreme cruelty. In his personal statement submitted in response to the RFE, the Petitioner stated that S-L- caused him emotional pain in that she demeaned him publicly, ruined his credit, and committed adultery and had a child with another man during their marriage. The Petitioner submitted reports from a credit bureau indicating that he had seven delinquent accounts and filed an Offense/Incident Report with the [REDACTED] Police Department indicating that he was the victim of identity theft. On motion, the Petitioner reiterates that he was demeaned by S-L-, but does not further describe any instance of abuse or extreme cruelty. He repeats that he was financially ruined by his spouse, and he resubmits materials indicating that he is disputing delinquency charges on his credit report. The Petitioner again asserts that he was abused by his wife because she had a child by another man during the marriage.

The Petitioner's statement and documentary evidence do not provide probative or sufficient details describing whether S-L- subjected the Petitioner to battery or extreme cruelty. He indicates in his brief on motion and in response to the RFE that he was demeaned by S-L- "in front of her family" but he provides no probative details regarding how she demeaned him. None of the financial documentation indicates that the Petitioner's spouse was involved in any of the disputed charges and the Offense/Incident Report made by the Petitioner does not indicate that S-L- was responsible for the disputed charges. In addition, while the Petitioner claims in his brief on motion that "what greater abuse exists for a man to find out that the child born after his marriage is not his biological child but a product of his wife's infidelity," adultery is not similar to the specific acts of qualifying abuse cited in the regulation, such as acts or threatened acts of violence, rape, molestation, or forced prostitution. *See* 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner did not present any evidence with the Form I-360, in response to the RFE, or on motion to show how the claimed infidelity of S-L- constitutes psychological abuse. Upon review of the record, the Petitioner has not established that S-L- subjected him to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Entry into the Marriage in Good Faith

The record before the Director contained a copy of a joint cable bill dated June 2010, copies of bank statements from a joint checking account for July 2010 and half of August 2010, and photographs of the Petitioner and S-L-. The Director determined this evidence to be insufficient to establish that the Petitioner married S-L- in good faith. On motion, the Petitioner resubmits copies of the cable bill, joint bank statements, and the photographs, and asserts that this evidence establishes his good faith marriage. Although the cable bill and bank statements indicate that the Petitioner and W-R- had two accounts together, the cable bill is for a very limited period of time and the bank account statements reflect fairly low balances, minimal transactions, and do not indicate whether the Petitioner or S-L- were accessing the funds. While the photographs depict the Petitioner and S-L- together, they appear to relate to only three or possibly four occasions, the identity of other persons in the photographs is not noted, and there is no indication of when and where they were taken. On that

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basis, the photographs are of little probative value in establishing that the Petitioner married S-L- in good faith.

In addition, the Petitioner has not provided any account of his relationship with S-L-, including how they met, their courtship and engagement, wedding ceremony, details of their joint residences and daily routines, or any of their shared experiences. Rather, the Petitioner states that he was pained to learn that S-L- had been unfaithful to him, as she bore another man's child during their marriage, and by implication, his grief is indicative of his good faith marital intentions. However, the Petitioner's claim of a link between his marital intentions and his grief has diminished value because the record shows that the child was born in [REDACTED] nearly [REDACTED] prior to the Petitioner's marriage to S-L-. The Petitioner does not submit evidence from friends or family members providing information regarding the Petitioner's intentions at the time of marriage or whether he married S-L- in good faith. Consequently, the Petitioner has not provided detailed and probative evidence that he entered into marriage with S-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place a petitioner has lived for at least six months during the three-year period immediately preceding the filing of the Form I-360. The Director determined that because the Petitioner had not submitted local police clearances or state-issued criminal background checks from California, where he resided for some portion of that period, he had not established his good moral character.

On motion, the Petitioner submits a police clearance from the State of California, Department of Justice, Bureau of Criminal Information and Analysis, dated July 31, 2013, stating that the Petitioner does not have a criminal record. The record also contains a similar report, which was filed in response to the RFE, from the Tennessee Bureau of Investigation indicating that the Petitioner does not have a criminal record in that state, where he resided for the remainder of the three-year period. Accordingly, the Petitioner has established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and the Director's decision to the contrary as to that issue is withdrawn.

D. Qualifying Relationship and Eligibility for Immigrant Classification

Beyond the decision of the Director, the Petitioner has not established that he had a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification.²

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, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of all a petitioner's prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). The Director in the RFE requested the Petitioner to submit evidence that his first marriage was terminated prior to his marriage to S-L-. In response, the Petitioner stated that his marriage was performed in a Hindu religious ceremony in India, was not registered with the civil authorities, and is neither recognized nor accepted as a valid marriage in the United States.

In order to determine the validity of the Petitioner's marriage to S-L- for immigration purposes, we look to the law of the jurisdiction where the Petitioner's first marriage was celebrated, which in this case is India. See *Matter of Arenas*, 15 I & N Dec. 174 (BIA 1975). According to the U.S. Department of State's India Reciprocity Schedule, all marriages in India can be registered with the appropriate government authority and "while Hindus and Muslims do not always register marriages, marriages by Hindus, Buddhists, Jains, or Sikhs may be voluntarily registered under the Hindu Marriage Act of 1955."³ In addition, California law recognizes marriages contracted outside of the state if such a marriage is valid in the jurisdiction in which the marriage was contracted. See Cal. Fam. Code § 308 (West 2009). California law further provides that a subsequent marriage to a person other than the former spouse, and during the lifetime of the former spouse, is illegal and void, unless the former marriage has been dissolved or adjudged a nullity before the date of the subsequent marriage. See Cal. Fam. Code § 2201 (West 2009).

Accordingly, the Petitioner has not shown that his first marriage is not legally valid in India. Nor has the Petitioner submitted evidence to show the termination of his first marriage, as required under the regulation. Consequently, the Petitioner has not established that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act. For this additional reason, the motion must be denied.

IV. CONCLUSION

On motion, the Petitioner has established that he is a person of good moral character. He has not, however, overcome the Director's determination that he was not battered or subjected to extreme cruelty by his U.S. citizen spouse, and married her in good faith. Beyond the decision of the Director, the Petitioner has not established that he had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based upon that relationship. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

The motion will be denied for the reasons set forth above, with each considered as a separate and alternative ground for denial. 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). Here, that burden has not been met.

³ India Reciprocity Schedule, U.S. Department of State, <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/IN.html>.

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ORDER: The motion to reopen is denied.

Cite as *Matter of H-M-P-*, ID# 14819 (AAO Dec. 22, 2015)