



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

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

MATTER OF I-O-

DATE: DEC. 30, 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 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 and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motions will be granted and the matter will be remanded to the Director for further consideration.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

We dismissed the Petitioner's appeal finding the record insufficient to establish that the Petitioner had been subjected to battery or extreme cruelty by his U.S. spouse, E-M-¹ during their marriage, that he entered into the marriage with her in good faith, and his corresponding eligibility for immediate relative classification. That decision is incorporated here by reference. On motion, the Petitioner submits a brief and additional evidence which meet the requirements under 8 C.F.R. § 103.5.

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record establishes the Petitioner's eligibility for the following reasons.

¹ Name withheld to protect individual's identity.

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A. Good-Faith Entry into Marriage

In our prior decision, we determined that the Petitioner had not established good-faith entry into his marriage with E-M- because the Petitioner and his friends' statements submitted below did not provide sufficient detail about his and E-M-'s courtship, engagement, wedding, and shared marital experiences. On motion, the Petitioner submits another personal statement which contains additional probative and detailed descriptions of their courtship, how he proposed, the wedding ceremony, shared marital experiences, and the plans he had for the future with E-M-.

The Petitioner also submits several statements from various family members and friends attesting to his good-faith entry into the marriage. His friends and family specifically describe seeing the couple's interactions, events they shared together including the couple's wedding, and the feelings for and future plans with E-M- that the Petitioner described to them.

The Petitioner's and his family's and friends' statements, in conjunction with the evidence submitted below, provide a detailed and credible account of his marital intentions. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the Petitioner entered into marriage with E-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Battery or Extreme Cruelty

The relevant evidence submitted on motion demonstrates that E-M- subjected the Petitioner to battery and extreme cruelty during their marriage. In his first affidavit submitted below, the Petitioner stated that E-M- was unfaithful and that her family did not approve of him. In subsequent affidavits, the Petitioner recalled that E-M- spent their money, had a drinking problem, insulted him, threatened him with divorce and the possibility of losing his immigration status, and that on one occasion he was slapped and threatened at gun point. In our decision, we determined that the Petitioner's claims of the emotional trauma experienced during his marriage were prefaced with his "observation that E-M-'s family did not accept him due to his race," and that the Petitioner did not provide sufficient probative details regarding any specific incident of abuse.

On motion, the Petitioner submits an affidavit further describing the abusive treatment he experienced and elaborating on E-M-'s threats and mistreatment of him. The Petitioner describes an incident in which E-M- brought her boyfriend to their house and slapped him several times. The Petitioner indicates that because of E-M-'s actions, he contemplated suicide and had to seek psychological help. The Petitioner also submits more detailed affidavits from friends and family that indicate that E-M- was abusive towards him. Various friends describe how the E-M- demeaned and humiliated him in public and threatened him. They also note that the Petitioner told them of the incident in which E-M- slapped him and he was threatened at gun point.

In addition, the Petitioner submits more detailed information from his mental health providers. [REDACTED] a licensed professional counselor, diagnosed the Petitioner with Post Traumatic Stress Disorder (PTSD) that he believes was exacerbated by the Petitioner's marriage to E-M-. [REDACTED] states that the Petitioner told him that E-M- called him names, hit him in front of his friends, slapped him, and

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threatened him. [REDACTED] a clinical psychologist, submitted a second letter in which he indicates that the Petitioner described to him how E-M- demeaned him and that she struck him in the face repeatedly while E-M-'s boyfriend robbed him at gun point. This information is consistent with the claims contained in the Petitioner's own statements.

Upon a full review of all the relevant and credible evidence submitted below and on motion, the Petitioner has overcome the basis of the Director's denial and our dismissal on appeal. The Petitioner has submitted affidavits that describe in probative detail the abuse he suffered. He has also submitted medical information which indicates that he is suffering from PTSD as a result of E-M-'s abuse. The record establishes that E-M- subjected him to physical harm and a cycle of threatened violence over the course of their marriage. The preponderance of the evidence demonstrates that E-M- subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

C. Qualifying Relationship

The Petitioner has demonstrated that E-M- subjected him to battery and extreme cruelty during their marriage and that there was a connection between the legal termination of his marriage and the battery and extreme cruelty. Accordingly, the Petitioner has established a qualifying relationship with a U.S. citizen spouse and is eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

D. Good Moral Character

Notwithstanding our determinations above, the petition is not approvable because the Petitioner did not establish his good moral character. Primary evidence of a petitioner's good moral character is his or her affidavit. *See* 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The Petitioner did not attest to his good moral character in the affidavits submitted below or on appeal.² A review of the administrative record shows that the Petitioner resided in both New Mexico and Texas for six or more months in the three years preceding his application. Although the Petitioner submitted a letter from the [REDACTED] New Mexico, to show his good moral character, the Petitioner did not submit a local police clearance or state issued criminal background check from Texas. Accordingly, the matter is remanded to the Director to provide the Petitioner the opportunity to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

² Although the Petitioner mentioned generally that he had never broken the law, he did not specifically attest to his good moral character.

IV. CONCLUSION

On motion, the Petitioner has established that E-M- subjected him to battery and extreme cruelty during their marriage, that he entered into the marriage in good faith, and that he is eligible for immigrant classification based upon a qualifying relationship. However, as the petition is not approvable based on the present record, the matter will be remanded to the Director for further action consistent with this decision.

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. 127, 128 (BIA 2013).

ORDER: The motions to reopen and reconsider are granted, and 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, which, if adverse, shall be certified to us for review.

Cite as *Matter of I-O-*, ID# 14731 (AAO Dec. 30, 2015)