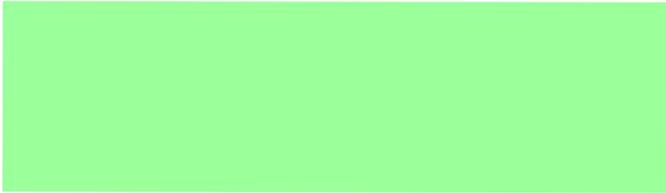
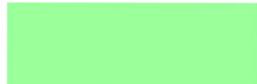


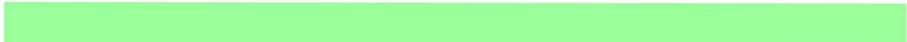
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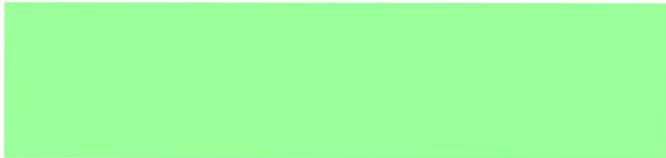


Date: **JAN 23 2015** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

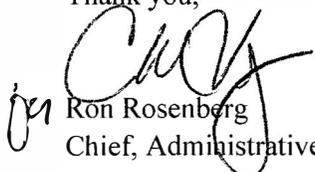


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the director) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before us on a combined motion to reopen and reconsider. The motion will be granted, but the petitioner will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition on the basis of his determination that the petitioner failed to establish that he is a person of good moral character and that he married his wife in good faith. We subsequently dismissed the petitioner's appeal, agreeing with the director that the record did not establish the petitioner's eligibility on those two grounds.

On motion, the petitioner, through counsel, submits a brief and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

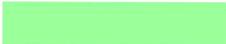
An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

* * *

(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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph[] (A) . . . of section 212(a)(2). . . .

* * *

The 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 evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Peru, married M-T-¹, a citizen of the United States, on October [REDACTED] in [REDACTED] Florida.² The petitioner filed the instant Form I-360 self-petition on October 9, 2008. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good moral character and good faith entry into marriage with M-T-, among other issues. The petitioner timely responded with additional evidence which the director found insufficient to establish his good moral character and good faith marriage. The director denied the petition and the petitioner timely appealed. Upon *de novo* review of the record, as supplemented on appeal, we found that the petitioner did not overcome the director's grounds for denial and dismissed the appeal. The matter is now before us on a combined motion to reopen and reconsider. The petitioner submits a brief and additional evidence. The petitioner's submission meets the requirements for a motion to reopen and a motion to reconsider.

Upon *de novo* review of the record, as supplemented on motion, the petitioner has not established eligibility for the benefit sought. Our prior decision will be withdrawn in part and affirmed in part.

¹ Name withheld to protect the individual's identity.

² The petitioner represented that he is divorced from M-T-; however, he did not provide documentation of his divorce or the date when his divorce was finalized. Public records indicate that the petitioner and M-T- divorced on April [REDACTED]

Good Moral Character

In our December 8, 2012 decision, we reviewed the evidence of record and determined that the petitioner failed to establish that he is a person of good moral character. The record shows the petitioner's criminal history as follows:

- 1) On July [REDACTED], the petitioner was arrested and charged with petit theft in violation of section 812.014 of the Florida Statutes.
- 2) On June [REDACTED] the petitioner was arrested by the [REDACTED] County, Florida Sheriff's office and charged with driving under the influence (DUI).
- 3) On March [REDACTED], the petitioner was arrested and charged with driving under the influence of alcohol or drugs in violation of section 316.193 of the Florida Statutes. On June [REDACTED] the petitioner pled guilty and he was fined \$1,082.50 due by August [REDACTED]

As referenced in section 101(f)(3) of the Act regarding those who may not be found to have good moral character, section 212(a)(2)(A) of the Act states, in pertinent part:

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if –

. . . .

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In our December 8, 2012 decision, we noted that the petitioner did not provide documentation of the disposition of the [REDACTED] charge for petit theft under section 812.014 of the Florida Statutes, or documentation of the portion of the statute under which he was charged. Although the petitioner asserted that the documentation showing that his case was "closed" indicated that he was not convicted, we observed that without further information, we were unable to conclude that the petitioner had not been convicted, and if he had, that the petty offense exception would have applied.

The petitioner did not describe the circumstances surrounding the arrest. We hereby incorporate by reference our December 8, 2012, discussion of this issue. The petitioner's arguments on motion with respect to the application of the petty offense exception are persuasive; however, we do not reach their merits because developments in case law have rendered this issue moot. In *Matter of Chairez-Castrejon*, 26 I&N Dec. 349, 352-55 (BIA 2014), the Board of Immigration Appeals revised the method to determine whether a statute that is not categorically a crime involving moral turpitude (CIMT) is divisible. Under the new framework, section 812.014 of the Florida Statutes is not divisible, and the modified categorical approach is not applied. Thus, even if the record confirmed a conviction under this statute, it would not be considered a conviction of a CIMT, and the application of the petty offense exception is, therefore, no longer relevant. In sum, a conviction under section 812.014 of the Florida Statutes does not preclude the petitioner from establishing his good moral character under section 101(f)(3) of the Act. On motion, the petitioner submits an affidavit, dated January 4, 2013, in which he describes the circumstances surrounding the July 3, 1989 arrest.

In our December 8, 2012 decision, we further noted that the petitioner did not provide the disposition of his June [REDACTED] charge for DUI. On motion, the petitioner submits documentation from the [REDACTED] County, Florida Traffic Court showing that the case was not prosecuted.

In consideration of the new evidence submitted on motion, in light of the revised analysis for CIMTs since we issued our last decision, and upon a full review of the record, the petitioner has now established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. We hereby withdraw the portion of our prior decision finding to the contrary.

Entry into the Marriage in Good Faith

In our prior decision, we determined that the preponderance of the relevant evidence submitted below and on appeal did not establish that the petitioner entered into his marriage with M-T- in good faith. We noted that the petitioner failed to provide sufficient probative information in his affidavits regarding the couple's courtship, wedding ceremony, joint residence and shared experiences beyond the abuse to establish his good-faith entry into the marriage. On motion, the petitioner declines to provide additional evidence, such as a personal affidavit addressing the deficiencies in the record, and instead, resubmits documents previously considered on appeal. The petitioner does not state how our prior decision affirming the director's denial on this issue was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Rather, the petitioner asserts that the previously submitted evidence meets his burden of proof. As detailed in our December 8, 2012, decision, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with M-T- in good faith. We hereby incorporate by reference our December 8, 2012, discussion of the petitioner's evidence of his good-faith entry into marriage with M-T-.

On motion, the petitioner resubmits his October 7, 2008 affidavit in which he briefly described his first date with M-T- and M-T-'s trip to Louisiana to visit the petitioner, before indicating that the couple secretly married on the spur of the moment in October [REDACTED]. The petitioner did not describe the wedding ceremony, or provide probative information regarding their long-distance courtship.

The petitioner briefly stated that he spent Thanksgiving, Christmas, and Valentine's Day with M-T- before he moved to [REDACTED] but did not provide a probative description of these or other shared experiences, besides the abuse. The petitioner also resubmitted his March 5, 2012 affidavit, in which he attested to marrying M-T- because he was in love with her. He further stated that he had employment authorization at the time that he married and, therefore, did not need to marry M-T- to remain in the United States. We observe that although the petitioner benefited from deferred action and employment authorization prior to his marriage to M-T-, he had no legal status in the United States. The petitioner's second affidavit does not contain probative testimony regarding his courtship, wedding ceremony, shared residences and experiences with M-T- sufficient to establish his intent in marriage. The petitioner also resubmitted affidavits from acquaintance [REDACTED] in which she stated that she met M-T- before the petitioner married her. She briefly indicated that she helped the petitioner select a Valentine's Day gift of a ring for M-T-, but did not further elaborate on the occasion. In addition, the petitioner resubmitted an affidavit from his sister, [REDACTED] dated February 22, 2012. The affidavit seems to indicate that M-T- met some of the petitioner's family members in Peru.³ Ms. [REDACTED] attested to meeting M-T- in the United States, but did not discuss the meeting or provide probative information regarding the petitioner's relationship with M-T- sufficient to establish his intent in marriage. In a brief submitted on motion, counsel asserts that the petitioner's sister and M-T- traveled to Peru together; however, this information is not contained in either the petitioner's or his sister's affidavits. Unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). In lieu of traditional joint documentation, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). USCIS has sole discretion to determine credibility of evidence and weight accorded. Section 204(a)(1)(J) of the Act. As described above, and in our December 8, 2012 decision, the petitioner did not provide affidavits with sufficient probative testimony describing his and M-T-'s courtship, wedding ceremony, and shared residence and experiences, beyond the details of the abuse. The traditional forms of joint documentation submitted by the petitioner also failed to establish his good-faith entry into the marriage. We discussed the deficiencies of that evidence, and the limitations on its probative value to establish the petitioner's intent in marriage in our prior decision. With respect to counsel's assertion on motion that we inappropriately discounted some of the petitioner's documentation, such as bank statements showing that the petitioner's and M-T-'s joint account was not utilized by both parties, we observe that it is the petitioner's burden to establish that he married his spouse in good faith. The petitioner need not show that he comingled his finances with M-T-, but documentation showing accounts that are not utilized by both parties does not help the petitioner meet his burden. Similarly, undated, unlabeled photographs of the petitioner and M-T- were not provided with sufficient context to accord them substantial probative value. When viewed in the totality, the

³ The inarticulate phrasing of the affidavit limits its probative value.

preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has not overcome all of the director's grounds for denial of the self-petition that we affirmed on appeal. The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The December 8, 2012, decision of the Administrative Appeals Office is withdrawn in part and affirmed in part. The appeal remains dismissed and the petition remains denied.