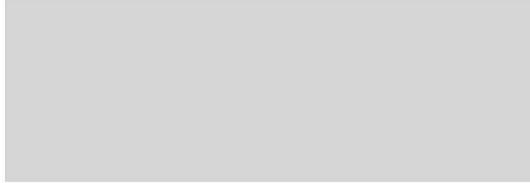




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 15 2015**

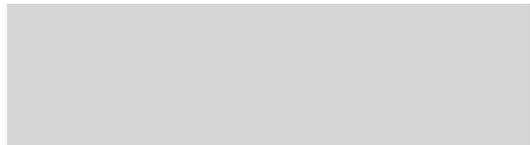
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

f Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director (“the director”) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 a United States citizen.

The director denied the petition finding the evidence insufficient to establish that the petitioner’s U.S. citizen spouse battered her or subjected her to extreme cruelty.

On appeal, the petitioner submits a brief.

*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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 explained further 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. 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.

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:

(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.

(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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Barbados who last entered the United States on August 16, 2011, as a B-2 nonimmigrant visitor. She married her U.S. citizen spouse, T-G-, on [REDACTED] 2011, in [REDACTED].<sup>1</sup> The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 3, 2014. The director subsequently issued a request for evidence (RFE) that, among other things, T-G- subjected the petitioner to battery or extreme cruelty. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on this ground. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record shows that the petition is unapprovable for the following reasons.

*Battery or Extreme Cruelty*

In her initial affidavit, the petitioner stated that T-G- exhibited signs of his allegedly controlling nature from the beginning of their marriage because he did not give her a key to their house. Instead, the petitioner claimed that he gave a duplicate key to his friend, [REDACTED] and told the petitioner that he did not have enough money to make a copy for her. Accordingly, the petitioner stated that she felt like a virtual prisoner in their home, waiting for T-G- to return home from work each day. The petitioner indicated that her father sent her money, which she then gave to T-G- to make a house key, and that T-G- lied to her about the price of the key by inflating the price so he could keep the remaining cash.

The petitioner described an incident after their marriage when T-G- threw a party for his friends who ate all the food in the house and did not clean up after themselves. The petitioner stated that when she complained to T-G- that his friends had consumed the limited food that the couple had, he became

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<sup>1</sup> Name withheld to protect identity.

upset and left the house. The petitioner described another incident when her friend, [REDACTED] visited her from Barbados in September of 2012. The petitioner claimed that when she and [REDACTED] went into [REDACTED] on September 10, 2012, T-G- ordered them to return at a 7 P.M., but then went to a comedy club and failed to meet them at the prearranged time. Because T-G- had the only key to the house, the petitioner indicated that she and [REDACTED] were forced to wait outside the residence until T-G- returned at 1 A.M. in the company of another woman. The petitioner explained that T-G- let her and [REDACTED] into the home, but then returned to his car with the woman and did not return to the marital residence until the next afternoon. The petitioner also stated that when she tried to discuss the incident, T-G- raised his voice and left their residence for three days. The petitioner indicated that while [REDACTED] was still visiting her and sleeping in her bedroom, T-G- returned to their home with another woman and had sex with the other woman in the living room. She claimed that T-G- declined to put her name on any bills or bank accounts, insisting that he did not have a bank account even though she had seen his bank card. The petitioner also asserted that T-G- failed to pay their bills, resulting in eviction notices, and that he and his friends smoked in their house even though the petitioner had asthma. She stated that "at one time he became physically abusive and pulled [her] hair," but did not describe the event in detail or provide further probative information. She claimed that she left T-G- and moved in with her aunt after [REDACTED] returned to Barbados.

The petitioner provided an affidavit from her friend, [REDACTED]. Although [REDACTED] generally provided the same account of her visit to the petitioner, her account contained some discrepant factual statements. Whereas the petitioner asserted that T-G- told her and [REDACTED] to return by 7 P.M., [REDACTED] asserted that T-G- told them to return home by 8 P.M. The petitioner indicated that her father sent her money that she gave to T-G- to make an extra house key, but [REDACTED] stated that she gave the petitioner the money. Although the petitioner stated that T-G- left the house with another woman and did not return until the next afternoon, [REDACTED] stated that T-G- returned to the house at 7 A.M. on the same day, after which [REDACTED] alleged that the petitioner and T-G- fought. [REDACTED] claimed she witnessed T-G- pull the petitioner's hair during the fight. Finally, whereas the petitioner alleged that she left T-G- after [REDACTED] returned to Barbados, [REDACTED] stated that she returned to Barbados the day that the petitioner moved in with her aunt.

The petitioner also included a psychological evaluation from a licensed psychologist, who described the events that the petitioner recounted to her, which generally followed the information the petitioner provided in her affidavit. The psychologist noted that the money [REDACTED] gave to the petitioner had been provided to [REDACTED] by the petitioner's father, that the petitioner asserted that T-G- had once pulled her hair when she confronted him over a suspected affair, and that the petitioner stated that she had found additional evidence that T-G- was cheating on her in their home beyond what [REDACTED] had witnessed. The psychologist indicated that that the petitioner "suffered from three of the six categories" suggesting psychological abuse under Tolman's definition, i.e., attacks on personhood, controlling contact with the outside world and her support systems, and withholding positive reinforcements within the relationship. However, the psychologist did not provide any additional probative details regarding T-G-'s behavior toward the petitioner.

In response to the director's RFE, the petitioner acknowledged discrepancies between her account and

that of [REDACTED] but stated that each of their accounts was based on their best recollections and estimates. The petitioner stated that T-G-'s behavior to her was "extremely cruel," that he starved her, and that she had to seek money from her family in order to eat. She recounted the incidents from her initial affidavit, but did not provide any additional probative information. The petitioner also provided affidavits from her father, mother, and grandmother, who asserted that the petitioner told each of them that T-G- was abusive and mistreated her. However, none of them claimed to have witnessed any specific incidents of abuse, and did not describe the abuse beyond generalities or otherwise provide probative details to establish that T-G- subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner asserts that the director disregarded the evidence and failed to fully consider the psychological evaluation, but does not provide any additional evidence. The petitioner's statements and those of her friends, family, and her psychologist contain only general claims of the alleged abuse. Although the petitioner and [REDACTED] indicated that T-G- pulled the petitioner's hair, they did not include probative details of the incident for purposes of establishing that T-G- battered the petitioner. The remaining claims about T-G-'s behavior do not establish that T-G- threatened the petitioner with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not provided sufficient evidence to demonstrate by a preponderance of the evidence that T-G- subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

After a de novo review of the record, we have determined that the petitioner has not provided the required primary evidence of her good moral character. Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). Although the petitioner provided an affidavit in support of her Form I-360 self-petition, she did not discuss her good moral character and instead focused on describing the abuse to which T-G- allegedly subjected her. She also did not include the required police clearances or state-issued criminal background checks for each place that she resided for six or more months during the three-year period prior to filing the petition. Although she submitted a clearance from the [REDACTED] police indicating that they had no arrest records for the petitioner, the clearance is dated July 13, 2013, and the petitioner filed the petition on April 3, 2014. Therefore, the police clearance does not cover nearly nine months that the petitioner resided in [REDACTED] prior to filing the petition. Because the petitioner has not provided the required primary evidence of her good moral character in the form of an affidavit and police clearances or a state-issued criminal background check covering the three-year period prior to filing the petition, the petitioner has not demonstrated that she is a person of good moral character, as required section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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NON-PRECEDENT DECISION

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*Conclusion*

The petitioner has not established that T-G- subjected her to battery or extreme cruelty and that she possesses good moral character. She 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 her 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); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.