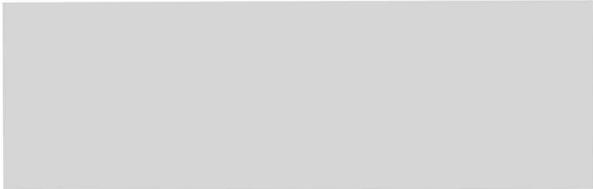




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 11 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center denied the petition. The Administrative Appeals Office (AAO) subsequently dismissed the appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted, and the prior decision of the AAO will be withdrawn and the matter will be remanded for entry of a new decision.

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 that the petitioner did not establish that he entered into his marriage in good faith. We upheld the director's decision and dismissed the appeal. On motion, the petitioner submits a brief and additional evidence.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A full review of the record as supplemented on motion demonstrates that the petitioner has overcome the director's ground for denial. However, as a de novo review also reveals that the petitioner remains ineligible on another ground, the matter will be remanded to the director for further action.

On motion, the petitioner submits a new affidavit in which he describes his first meeting with T-F- at his friend's holiday party in 2003. He describes their early courtship and dates, including the day he explained to T-F- that he has a medical condition and realized that he wanted to spend the rest of his life with her. The petitioner comprehensively discusses their years of dating and residence together, and how her children came to live with them over time. He provides a detailed account of his attempts to remain with his wife despite her alcoholism and behavior and its effect on their shared marital life.

The petitioner includes affidavits from friends who describe their shared experiences with the petitioner and T-F-. [REDACTED] explains that he became good friends with the petitioner in December of 2003, and that he introduced the petitioner to T-F- at his holiday party. He states that he and his wife often went out with T-F- before and after she met the petitioner, that he often went to their house, and that "they were in a true and loving relationship." Mr. [REDACTED] indicates that they did many things together and describes occasions, including barbeques, dinners, and their wedding and wedding reception. [REDACTED] states that he met the petitioner and T-F- at his job at [REDACTED] where they came to dine, and that they all became friends. He discusses going to dinner at their house on several occasions where he describes meeting T-F-'s two sons, but eventually told the petitioner that he was not comfortable coming to the house after he witnessed T-F-'s drinking and the "bad behavior" of her two sons. [REDACTED] explains that she was T-F-'s hairdresser before T-F- met the petitioner, and that after T-F- and the petitioner started dating, the petitioner came to the hair salon and held hands with T-F-. Ms. [REDACTED] describes the petitioner's and T-F-'s affection for each other when she went to dinner with them and when they went out dancing together. She further indicates that she styled T-F-'s hair for their wedding. [REDACTED] explains that he worked at the same hair salon as Ms. [REDACTED] and generally asserts that he knew the petitioner and T-F- and that

they seemed to be happy together.

On motion, the petitioner also asserts that the agency appears to have improperly required specific primary evidence from the petitioner, whereas the regulations require the agency to consider any credible evidence. While U.S. Citizenship and Immigration Services (USCIS) must consider all credible, relevant evidence of the petitioner's good faith marriage, the determination of what evidence is credible and the weight accorded that evidence lies within the agency's sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (vii). Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit specific documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, the petitioner did not initially provide sufficient probative details regarding his marital relationship to establish his good-faith entry into marriage. On motion, the affidavits from the petitioner and his friends contain a probative account of the petitioner's marital relationship and establish by a preponderance of the evidence that he entered into his marriage with T-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. However, the petition remains unapprovable for the following reason.

Based on the petitioner's motion, we have conducted a de novo review of the record and determined that the petitioner did not submit required evidence of his 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 his Form I-360 self-petition, he did not discuss his good moral character and instead focused on describing the abuse to which T-F-subjected him. He also did not include the required police clearances or state-issued criminal background checks. Instead, he submitted a Certificate of Record Search from the [REDACTED] Florida Circuit Court Felony Division indicating that it had "no record of any charges against" the petitioner. The petitioner has not established that a record search of charges from the felony division of the [REDACTED] Florida Circuit Court is equivalent to a police clearance or a state-issued criminal background check. Moreover, the document is checked to indicate that the petitioner was given notice "to contact the County Court Traffic and Misdemeanor Division for [a] further record search," but he did not provide these results. Because the petitioner did not provide primary evidence of his good moral character in the form of an affidavit and police clearances or a state-issued criminal background check, the petitioner has not demonstrated that he is a person of good moral character, as required section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The matter is remanded to the director to request the appropriate evidence relating to the petitioner's good moral character and enter a new decision into the record. As always in these proceedings, 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); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010).

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NON-PRECEDENT DECISION

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.