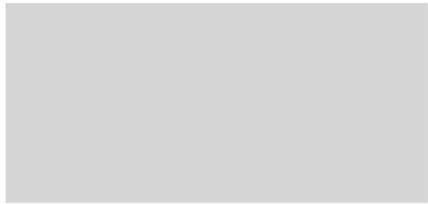




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 30 2015

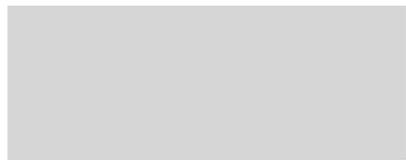
FILE #: [REDACTED]

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification under 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 United States citizen spouse.

The director denied the petition on the basis that the petitioner did not demonstrate that he was a person of good moral character, entered into the marriage with his wife in good faith, and resided with her. On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

* * *

(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.

* * *

(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 under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 is a citizen of the Dominican Republic who was last paroled into the United States on January 9, 2005. He had previously married his wife, L-M-¹, a then lawful permanent resident of the United States on [REDACTED] 2000 in the Dominican Republic. The petitioner indicated that he later entered the United States without inspection, admission, or parole in December 2000. The record indicates that L-M- became a naturalized U.S. citizen on May 16, 2003. The petitioner filed the instant Form I-360 self-petition on February 19, 2014. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character, good faith entry into his marriage with L-M-, and his joint residence with her. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner timely appealed.

We review these matters on a *de novo* basis. Upon full review of the record, as supplemented on appeal, the petitioner has overcome all of the director's grounds for denial. Accordingly, the appeal will be sustained for the following reasons.

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 the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in August 2013 and ending in February 2014). The director correctly determined that the petitioner did not establish his good moral character, as the record below indicated that criminal charges were pending against him stemming from two arrests involving his violation of a protection order, issued against him in favor of his wife, and he did not submit any court or police records relating to his arrests.

On appeal, the petitioner submits certified dispositions for both arrests demonstrating that the two charges were consolidated and the petitioner was acquitted after trial. The petitioner asserts that he has never committed or been convicted of any crime that would bar a finding of his good moral

¹ Name is withheld to protect the individual's identity.

character. He credibly explained the circumstances of his two arrests, indicating that L-M- filed for a protection order against him in order to cause him harm and that prior to and even after filing, she continued to harass him. The petitioner eventually filed for a protection order against L-M- and recounted how she retaliated by having him arrested for violating the protection order against him when he went to the police precinct to enquire about the protection order petition he had filed. The petitioner recalled that after his release, L-M- had him arrested again, on [REDACTED] 2013, for threatening to kill her. In his statement, the petitioner denied L-M-'s allegations and asserted that she falsely accused him out of anger because he had separated from her. As noted, the record indicates that the petitioner was acquitted of all charges following a trial. The record does not reveal any other arrests or convictions for the petitioner and also contains several letters from friends and members of his community attesting to his good moral character.

On appeal, the petitioner has established that he is a person of good moral character. As stated by 8 C.F.R. § 204.2(c)(1)(vii), 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. The record does not show that the petitioner has been convicted of any crimes or engaged in any actions that fall within any of the enumerated bars to a finding of good moral character under section 101(f) of the Act. Nor does it show that he has engaged in actions that fall below the standards of the average citizen in the community. The petitioner's statement and the letters of support from others also attest to his good moral character. Accordingly, the petitioner has established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Joint Residence

The director erred in determining that the petitioner did not establish joint residence with his wife. On the Form I-360, the petitioner indicated that he resided with L-M- from December 2000 to August 2011, and that their last shared residence was at [REDACTED]

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the director did not take into consideration the petitioner's statements which provided credible and probative information regarding his shared residences with L-M-. The petitioner specifically recounted coming to the United States in December 2000 and moving in with his wife and her daughter at [REDACTED] a residence he described in probative detail. The petitioner stated that he and his wife lived there together for about eight years before moving to [REDACTED] setting forth substantive information of their shared residence there. He indicated that he and his wife resided together in the [REDACTED] apartment until they separated, after which she continued to reside there without him.

The petitioner also submitted a renewal lease dated April 30, 2013, listing L-M-, her daughter, and himself as tenants for the apartment at [REDACTED]. As the director correctly noted, the lease does not bear the petitioner's or L-M-'s signatures and was for a period after August 2011, the date the petitioner indicated on the Form I-360 petition that he and his wife ceased residing together. On

appeal, counsel for the petitioner provides a reasonable explanation for the inconsistency, acknowledging that her office inadvertently erred in listing the year as 2011 on the Form I-360 when it was actually 2013 that the petitioner and L-M- last resided together. In addition, the renewal lease shows that the parties were offered an opportunity to renew their existing lease at [REDACTED]. Thus, the document indicates that the petitioner was at one time a joint tenant with his wife during their marriage. The lack of signatures on the renewal lease is not dispositive as the record indicates that the petitioner later separated from L-M- and moved out, and he never asserted that he renewed the lease. The record also included L-M-'s spousal support petition against the petitioner, dated July 30, 2013, in which she affirmed before a family court that they were both residing at [REDACTED] apartment at the time.

The petitioner provided credible, probative information in his statements and other documentary evidence submitted below regarding his joint residence with his wife. In addition, the petitioner submits on appeal a family court summons, issued to him on July 30, 2013 and showing his address at the time as [REDACTED], where L-M- also resided. Thus, when viewed in the totality, the preponderance of the relevant evidence and the petitioner's explanations on appeal demonstrate that he jointly resided with his wife as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The director's contrary is hereby, withdrawn.

Entry into the Marriage in Good Faith

The relevant evidence submitted below also demonstrated the petitioner's good faith entry into his marriage. Traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, 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). The petitioner provided a probative, credible, and detailed account of his long term romantic relationship with L-M-, which commenced in approximately 1989 when she visited her native Dominican Republic. He described their initial meeting there in 1988 and how they started an on-again, off-again long distance relationship that spanned more than a decade. The petitioner stated that he fell in love with L-M- and he recalled in detail their wedding ceremony and reception at her mother's home. He credibly and probatively described his relationship with L-M- and his good faith intentions in marrying her.

The record also included below the statement of the petitioner's cousin, [REDACTED] who indicated that although he did not have a good relationship with L-M-, he recognized that the petitioner loved her and stayed with her so long, despite her abusive conduct, because he did not want to hurt her and hoped that by staying and caring for her, she would improve. As discussed, the renewal lease provides some evidence of the petitioner and L-M-'s relationship and joint residence. Similarly, the spousal support petition and corresponding orders also evidence the petitioner's marital relationship with his wife.

De novo review of the relevant evidence, submitted below and on appeal, establishes the petitioner's good faith entry into the marriage. Here, the petitioner has provided credible, probative and detailed statements, supplemented by documentary evidence, demonstrating his good-faith intent upon marrying L-M-. When viewed in the totality, the preponderance of the relevant evidence demonstrates

that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's determination to the contrary is withdrawn.

Conclusion

On appeal, the petitioner has overcome all of the director's grounds for denial, having established that he is a person of good moral character, that he entered into the marriage with his wife in good faith, and that he resided with her. Accordingly, the petitioner has established his eligibility 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 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, 375 (AAO 2010). Here, that burden has been met, and the appeal will be sustained.

ORDER: The appeal is sustained.