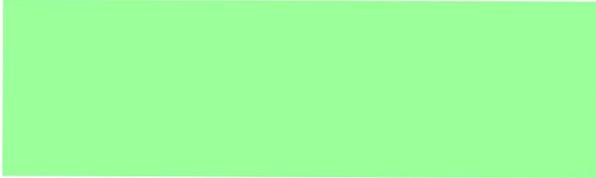
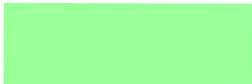




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 20 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 Acting Director, Vermont Service Center, (the director) denied the immigrant visa petition and summarily dismissed a subsequent motion to reopen and to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision on motion will be withdrawn and the director's initial determination of ineligibility will be affirmed in part and withdrawn in part. The appeal will be dismissed and the petition 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 a United States citizen.

The director determined that the petitioner had not established that he had been battered by, or subject to extreme cruelty by his U.S. citizen spouse, and that he is a person of good moral character. The director dismissed a subsequent motion, finding that the petitioner failed to submit additional evidence and/or to support the motion with precedent decisions or establish that the decision was based on an incorrect application of law or policy.

On appeal, the petitioner does not submit a brief or 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 explained in the regulation 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

\* \* \*

(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. 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Nigeria who was admitted to the United States on June 14, 2002, as a nonimmigrant visitor. The petitioner married T-D-<sup>1</sup>, a U.S. citizen, in [REDACTED] VA on [REDACTED] 2003. The petitioner filed the instant Form I-360 self-petition on January 25, 2012. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's good moral character and his wife's battery or extreme cruelty. The petitioner timely responded to each RFE with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed a motion to reopen and reconsider. On motion, the petitioner submitted a statement, a psychological evaluation, and evidence to establish his good moral character. The director summarily dismissed the motion, finding that the petitioner failed to submit evidence or argument in support of the motion. The director's decision on motion was erroneous and is withdrawn.

On appeal, we will consider the petitioner's evidence submitted on motion under our *de novo* review authority. A full review of the record, including the evidence submitted on motion to the director, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

We find no error in the director's initial determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on motion before the director does not overcome this ground for denial. The petitioner initially submitted with his self-petition two personal statements and affidavits from friends [REDACTED] and [REDACTED]. On motion before the

<sup>1</sup> Name withheld to protect the individual's identity.

director, the petitioner submitted a third personal statement and a psychological evaluation. On appeal, the petitioner submits no further evidence.

In the petitioner's initial statement he indicated that his marriage to T-D- was blissful until July 4, when he heard T-D- in an intimate conversation with her female friend L-<sup>2</sup> on the telephone.<sup>3</sup> He stated that when he confronted T-D-, she began screaming at him, called him names, and that they stopped having marital relations. He stated that in September 2007 he found T-D- in their bed with L-, and that she became very upset and moved out the next day to live with L-. In his second statement he indicated that the verbal abuse started in September 2006 after he confronted T-D- about cheating on him with a woman. He stated that she would hit him, began to call him names regularly, cursed at him frequently in front of their roommate, and threatened him with deportation. He described how distressed, traumatized and humiliated he became, and that he began to be anxious, lost sleep, and made so many mistakes at work that he lost several jobs. The petitioner did not provide substantive information about specific incidents of abuse. In his declaration submitted on motion to the director, the petitioner repeated his earlier statements, and added that in one of their arguments, T-D- hit him in the chest. He did not further provide probative details about this incident or any other specific instance of abuse. The petitioner's statements did not otherwise demonstrate that T-D- ever battered him, or that her behavior involved actual or threatened violence, psychological or sexual abuse, a pattern of abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

stated that he worked at the apartment complex where the petitioner lived with T-D- and had always observed them as a happy couple. He explained that in September 2006 he witnessed the petitioner and T-D- having a loud argument. the petitioner's brother-in-law, stated that in August 2006 the petitioner confided in him that T-D- was having an affair with a woman, and that T-D- got furious with the petitioner for telling described receiving phone calls from the petitioner twice a week to talk about his wife's homosexual affair. recounted that in March 2006 he confronted T-D- about the behavior, and she shouted at him and threatened to call the police. He stated that he had not spoken to T-D- since. The affidavits of and did not provide probative details about witnessing any instances of physical abuse, or describe behavior by T-L- toward the petitioner that involved actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined by the regulations.

On motion to the director, the petitioner submitted a psychological evaluation from Psy.D. Dr. stated that she had two appointments with the petitioner in December 2013. She indicated that the petitioner told her that T-D- became verbally abusive after he confronted her about her relationship with L-, called him demeaning names and threatened him with deportation. The petitioner recounted to Dr. that during the year with T-D- following his discovery of her homosexual relationship, his attempts to communicate with T-D- were met with violent threats and verbal abuse, such as cursing, screaming obscenities, threatening and slandering him.<sup>4</sup> Dr. opined that the

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> Other evidence indicated that the year of this discovery was 2006.

<sup>4</sup> Dr. stated that the petitioner suffered from persistent pain in his neck and shoulders from T-D-'s repeated physical attacks, but did not provide a basis for this conclusion. As the petitioner's testimony did not establish that T-D- hit him repeatedly, we will not give weight to Dr. observation of physical abuse.

petitioner suffered from post-traumatic stress disorder and experienced severe anxiety and depressive symptoms as a result of the trauma he experienced in his marriage with T-D-. Dr. [REDACTED] concluded that the petitioner was the victim of a long-standing pattern of behavior from T-D- designed to control him both psychologically and physically. While we do not question Dr. [REDACTED] professional expertise, her evaluation did not provide probative details of specific instances of verbal abuse or demonstrate a pattern of psychological abuse under the regulation.

A full review of the evidence on appeal does not establish that the petitioner has been battered or subjected to extreme cruelty by his wife. Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Moral Character*

On motion to the director, the petitioner submitted sufficient evidence to overcome the director's initial finding that the petitioner was not a person of good moral character. The director's initial determination to the contrary will be withdrawn.

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 January 2009 and ending in January 2012). The director determined that since the petitioner had not submitted local police clearances or state-issued criminal background checks from Maryland, he had not established his good moral character.

The petitioner submitted the results of a name and date of birth search for a criminal history from the Maryland Information Technology and Communications Division, Criminal Justice Information System, Central Repository, and disposition records from the District Court of Maryland for [REDACTED]. The District Court records indicated that the petitioner was arrested on [REDACTED] 2008 by the Maryland State Police in [REDACTED], MD, and pled guilty to a misdemeanor traffic offense. The court entered an order of probation before judgment and a fine of \$150. All other charges arising out of the incident were dropped.

Section 101(f)(3) of the Act bars a finding of good moral character for any alien "described in" section 212(a)(2)(A) of the Act. While section 212(a)(2)(A)(i)(I) of the Act describes any alien convicted of a crime involving moral turpitude, subsection 212(a)(2)(A)(ii)(II) of the Act explicitly excludes from that definition any alien convicted of a crime for which the maximum penalty did not exceed one year and the alien was not sentenced to a term of imprisonment exceeding six months. 8 U.S.C. § 1182(a)(2)(A)(ii)(II). This provision is commonly referred to as the petty offense exception.

In reviewing the evidence submitted on motion to the director, the record shows that on [REDACTED] 2008, the petitioner pled guilty to violating Maryland Transportation Code § 21-904(c)(1)(attempt by driver to elude police by intentionally failing to stop), a misdemeanor. See MD CODE ANN.

TRANSP. § 21-904(c)(1) (West 2014). In *Matter of Armando Ruiz-Lopez*, I&N Dec. 551 (BIA 2011), the Board of Immigration Appeals (BIA) found that fleeing to elude a police officer was a crime involving moral turpitude, in that the respondent in that case exhibited intentional disregard of the officer's command. As the Maryland statute in this case has the same element, intentionally eluding a police command, the petitioner's conviction is a crime involving moral turpitude. In Maryland, the maximum penalty for a first offense violation of Maryland Transportation Code § 21-904 is a fine of not more than \$1000 or imprisonment for not more than one year, or both. See MD CODE ANN. TRANSP. § 27-101(p)(1)(i) (West 2014). As the maximum sentence for the offense did not exceed one year and the petitioner was not sentenced to any term of imprisonment, the petitioner's conviction falls within the petty offense exception to classification as a crime involving moral turpitude and section 101(f)(3) of the Act does not apply.

Here, the petitioner has no other criminal convictions. The petitioner additionally submitted statements from three persons who attest to the petitioner's trustworthy, generous and honorable character. The regulation 8 C.F.R. § 204.2(c)(1)(vii) provides that 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 petitioner's conviction of a crime of moral turpitude for evading the police is exempt as a minor offense and does not bar to a finding of good moral character under section 101(f) of the Act. Accordingly, the petitioner has established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Conclusion*

On appeal, the petitioner has established that he is a person of good moral character. However, he has not overcome the director's determination that his spouse did not subject him to battery or extreme cruelty. He 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 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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.