



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Y-L-A-A-

DATE: NOV. 24, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center (Director), denied the petition. The matter is now before us on appeal. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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.

Section 204(a)(1)(J) of the Act 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 at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of the Republic of Benin, entered the United States on June 13, 2013 as a nonimmigrant fiancé. The Petitioner married S-A-,¹ a U.S. citizen, on [REDACTED] 2013 in [REDACTED] Minnesota.² The Petitioner filed the instant Form I-360 on August 19, 2014. The Director subsequently issued a request for evidence (RFE), in part, of the petitioner's good-faith entry into the marriage. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The Director denied the petition, finding that the petitioner did not marry S-A- in good faith. The Petitioner timely appealed.

We review these proceedings *de novo*. On appeal, the petitioner submits a brief and supplemental evidence. Upon a full review of the record as supplemented on appeal, the petitioner has overcome the director's ground for denial. The petition may not be approved, however, as the record does not contain sufficient evidence to establish that the Petitioner is a person of good moral character. We will remand the proceedings to the Director for the following reasons.

III. ANALYSIS

A. Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal demonstrates the Petitioner's entry into the marriage in good faith. The Petitioner initially submitted a personal declaration in which he described first meeting S-A- in 2010, and her subsequent visit to Togo for several months in early 2012, during which time they resided together, consulted with a doctor about having a child together, and celebrated their traditional marriage. He also submitted photographs of the couple at the traditional marriage ceremony in Togo and from their subsequent civil ceremony in Minnesota, copies of two statements from a joint checking account in the names of both the Petitioner and S-A-, and letters from his friends, Sister [REDACTED] attesting to their personal knowledge of the couple's relationship.

In response to the RFE, the Petitioner submitted two additional personal declarations in which he expressed his love for S-A-. He described the various introductions of S-A- to his family members, friends, and colleagues in Togo and Benin. The Petitioner also discussed meeting S-A-'s uncle in Togo, and their lives together in Minnesota. The Petitioner submitted a letter from [REDACTED] head of S-A-'s family, certifying the family's support for the Petitioner's marriage to S-A- and declaring the bona fides of the traditional ceremony in March 2012. He provided a similar letter from [REDACTED] the head of the Petitioner's family council, describing the family's welcome of S-A- into the family and the family's witness to the traditional ceremony in March 2012. In addition, the letters from his friends, Sister [REDACTED] and [REDACTED] described meeting S-A- in Togo as the Petitioner's fiancée and witnessing the couple's

¹ Name withheld to protect the individual's privacy.

² The petitioner states that the marriage ended in divorce on [REDACTED] 2014, in [REDACTED] Minnesota.

(b)(6)

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interactions prior to the traditional marriage ceremony. A letter from [REDACTED], a former student of the Petitioner now living in the United States, described in probative detail her visit to the Petitioner and S-A-'s home in Minnesota. The Petitioner also submitted a physician's letter and medical report discussing a fertility consultation for himself and S-A-. The record also contains the following documentary evidence: the Petitioner and S-A-'s driver's licenses reflecting a common address; a 2013 federal tax return transcript indicating that the couple filed as married filing jointly; a 2013 property tax adjustment from the Minnesota Department of Revenue in the names of the Petitioner and S-A-; and additional photographs of the couple.

In denying the petition, the Director indicated that that the joint bank account was not utilized for common household expenses, and stated that neither the bank statements nor the 2013 tax return showed that the Petitioner and S-A- commingled resources. The Director noted that the Minnesota identification cards might establish a common residence but did not reflect on the Petitioner's good faith in marrying S-A-, and the record did not show that the joint health insurance application was filed or approved. The Director determined that the Petitioner's personal statements and the statements from his friends and family failed to provide probative details regarding the Petitioner's good-faith intentions in entering the relationship. On appeal, the Petitioner submits evidence that the health insurance application was filed and approved, and an additional statement in which he recounts that he loved S-A- and "risked everything," including quitting his work and life in Togo, to come to the United States to be with her. He contends that it is difficult from him to obtain documentary evidence because S-A- is abusive and controlling.

Evidence of commingled finances is not required to demonstrate a self-petitioner's good-faith entry into a marriage. The regulation at 8 C.F.R. § 204.2(c)(2)(vii) provides that all credible, relevant evidence will be considered. Here, the petitioner submitted evidence from numerous individuals describing formal introductions of the betrothed couple and the support of both extended families for the union. The record establishes the serious nature of the relationship from the inception, as shown by the couple's consultation with a gynecologist to determine their ability to have children together. The record contains letters from friends and professional associates describing the extended courtship, their interactions with the couple both before and after the marriage, and the traditional and civil ceremonies. The record contains photographs of the Petitioner and S-A-, and their extended families and friends, from two wedding ceremonies and other occasions. Accordingly, the Petitioner has established by a preponderance of the evidence that he entered into marriage with S-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Good Moral Character

Beyond the decision of the director, the appeal cannot be sustained because the Petitioner has not demonstrated his good moral character.³ The regulations state that primary evidence of a

³ We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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 2011 and ending in August 2014). 8 C.F.R. § 204.2(c)(2)(v). If the petitioner resided outside the United States during this time, he or she should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country. *Id.*

The record reflects that the Petitioner lived in the Republic of Togo and the State of Minnesota during the three years immediately preceding the filing date of the petition. The Petitioner submitted online print-outs reflecting that he conducted a name and date of birth search on the State of Minnesota public databases, which is not the equivalent of state-issued and foreign country-issued background checks or local police clearances. *See* 8 C.F.R. § 204.2(c)(2)(v). Because the record does not contain the requisite criminal background checks from these two jurisdictions, we cannot determine that the Petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. As the Director has not previously addressed this issue, the matter will be remanded for the Director to determine whether the Petitioner is a person of good moral character.

IV. CONCLUSION

On appeal, the Petitioner has demonstrated that he entered into marriage with his spouse in good faith. Nevertheless, he is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, as the record does not establish that he is a person of good moral character. Accordingly, the proceedings will be remanded for the Director to determine whether the Petitioner is a person of good moral character. As always, the Petitioner bears the burden to establish his eligibility. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of Y-L-A-A-*, ID# 14558 (AAO Nov. 24, 2015)