



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

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

MATTER OF O-O-A-

DATE: APR. 29, 2016

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) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, revoked approval of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, concluding that the Petitioner did not establish that she was abused by her spouse, that she is a person of good moral character, and that she has a qualifying relationship as the spouse of a U.S. citizen.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief, and copies of previously provided evidence.

Upon *de novo* review, we will dismiss the appeal.

#### I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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).

In regards to determining a petitioner's good moral character, section 101(f) of the Act states in pertinent part:

The fact that any person is not within any of the foregoing classes [101(f)(1) through (f)(9)] shall not preclude a finding that for other reasons such person is or was not of good moral character . . . .

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

....

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

....

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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:

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

. . . .

(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.

U.S. Citizenship and Immigration Services (USCIS) may revoke approval of a Form I-360 at any time for good and sufficient cause. *See* section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

On appeal, the Petitioner does not address the Director's finding that the Petitioner did not establish that her U.S. citizen spouse, R-J-,<sup>1</sup> battered her or subjected her to extreme cruelty. She also does not address the Director's determination that she did not establish her good moral character. Instead, the Petitioner asserts that the Director erroneously concluded that she married twin brothers on the same day. The Director, however, did not make that determination in her final decision. Rather, in the notice of intent to revoke (NOIR) approval of the petition, the Director noted that the Petitioner had listed R-J-'s twin brother on her Form I-485, Application to Adjust or Register Permanent Residence, but in her final decision, the Director noted that the Petitioner had resolved this issue and established that R-J- was her sole U.S. citizen spouse. The Petitioner also reiterates comments that she had previously made in response to the NOIR, including suggesting that the Director should have interviewed her before revoking approval of the Form I-360 and that the Director's decision may have been personally motivated. However, there is no statutory or regulatory requirement that USCIS interview a petitioner before revoking approval of a Form I-360, and the Petitioner provides no evidence that the Director's decision was personal or biased.

In addition to the above two uncontested grounds, the Director also determined that although the Petitioner asserted in her Form I-360 that she had not been married prior to her marriage to R-J-, she had previously claimed to have been "divorced" when she sought to obtain her B1/B2 nonimmigrant visa in 1999. The Director therefore concluded that the Petitioner did not establish a qualifying relationship with R-J-. On appeal, the Petitioner contends that the Director should have accepted her assertion that she was never married in Nigeria. However, she does not address the Director's finding that she has undermined her credibility by making contradictory assertions on her visa application or otherwise explain why she made that assertion previously. The Petitioner further indicates that the Director should have provided evidence of the Petitioner's prior marriage, if it existed; however, in visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

## III. CONCLUSION

On appeal, the Petitioner challenges assertions made by the Director in the NOIR but not relied upon in the subsequent decision to revoke approval of the Form I-360. The Petitioner does not, however, contest the Director's determination that she did not establish that her U.S. citizen spouse battered her or subjected her to extreme cruelty and that she possesses good moral character. Further, she does not submit any further claims or evidence regarding the termination of her previously claimed marriage to overcome the Director's finding that she did not establish a qualifying relationship with R-J-. As the Petitioner has not established the Director erred in her decision and has not provided sufficient evidence to overcome the Director's decision, we must dismiss the appeal.

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

*Matter of O-O-A-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-O-A-*, ID# 16179 (AAO Apr. 29, 2016)