



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

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

MATTER OF G-W-W-

DATE: AUG. 2, 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, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded that the Petitioner provided insufficient evidence to establish that she resided with F-M-,¹ her U.S. citizen spouse, that F-M- battered her or subjected her to extreme cruelty, that she is a person of good moral character, and that she entered into her marriage with F-M- in good faith.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement and additional evidence. The Petitioner claims that the Director should not have denied the VAWA petition without first issuing a notice of derogatory information.

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 United States citizen may 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.

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

¹ Name withheld to protect the individual's identity.

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 past

(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.

....

(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 standard and guidelines for a Form I-360 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which provides, in pertinent part:

(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.

(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.

.....

(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.

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

A. Good Moral Character

Prior to denying the VAWA petition, the Director issued a request for evidence (RFE) of the Petitioner's good moral character in the form of a personal statement and police clearances relating to each location in which the Petitioner had resided for at least six months during the prior three-year

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period prior to filing the VAWA petition. The Petitioner submitted a court disposition but not the required police clearances that the Director requested.

On appeal, the Petitioner submits a new personal statement regarding her good moral character and a police clearance for the State of Ohio. Her criminal history records reflect that in the [REDACTED] Ohio Municipal Court on [REDACTED] 2013, the Petitioner pled guilty and was convicted of a single offense of being in physical control of a vehicle while under the influence in violation of Ohio Rev. Code section 4511.194(B), a misdemeanor. (Case No. [REDACTED]). The Petitioner was sentenced to three days imprisonment, with credit for three days time served, fined \$375.00, and her driver's license was suspended for 180 days. This conviction is not for a crime of moral turpitude or an aggravated felony, and does not otherwise preclude a finding that she has good moral character. See section 101(f) of the Act, 8 U.S.C. § 1101(f); 8 C.F.R. § 204.2(c)(2)(v). However, the VAWA petition remains unapprovable for the following reasons.

B. Residence, Battery or Extreme Cruelty, Good Faith Entry into Marriage

1. Proper Notice Provided

On [REDACTED] 2014, the Petitioner was detained by U.S. Immigration and Customs Enforcement (ICE). According to a Form I-213, Record of Deportable/Inadmissible Alien, prepared by ICE on that same day, the Petitioner explained that she was not on F-M-'s lease because he resided in section 8 housing, and she "freely admit[ted] that [she and F-M-] do not reside together, never have and that they are estranged because they are 'going through some things.'" Prior to denying the VAWA petition, the Director issued an RFE, in which she advised the Petitioner that the Petitioner's [REDACTED] 2014, statement to ICE contradicted the claims within her VAWA petition to have resided with F-M-, to have been battered or subjected to extreme cruelty by F-M- while they resided together, and to have entered into marriage with F-M- in good faith. The Director explained that given the contradictory evidence, the Petitioner's credibility was in doubt, the evidentiary weight of her statements was diminished, and the Petitioner had submitted insufficient evidence to establish her eligibility on these grounds. The Petitioner's response included additional documents, but did not address her own contradictory statement of [REDACTED] 2014. The Director consequently denied the VAWA petition, explaining that the response consisted of the Petitioner's own claims or claims the Petitioner made to third parties and therefore was insufficient to establish her eligibility for approval of the VAWA petition given the Petitioner's demonstrated lack of credibility.

On appeal, the Petitioner cites to the regulation at 8 C.F.R. § 103.2(b)(16)(i) regarding agency notice of derogatory information. The regulation provides, in relevant part:

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered

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According to the Petitioner, we should remand the matter to the Director for issuance of a notice of intent to deny because the Director did not provide her the opportunity to address the statement she made to ICE on [REDACTED] 2014. She asserts that “there is no indication that the [Petitioner’s] statements [on [REDACTED] 2014] were recorded or memorialized in writing” and it is “impossible to rebut the evidence as it is not first presented” to the Petitioner. However, as discussed, the statement was memorialized on the Form I-213 and the Director provided the Petitioner with notice of her own contradictory statement in the RFE and in the final decision.

Although the Petitioner suggests that the agency must provide her with a copy of the actual statement, the regulation at 8 C.F.R. § 103.2(b)(16)(i) does not require USCIS to provide the Petitioner “with a complete copy” of the documents containing the derogatory information. Rather, the regulation requires U.S. Citizenship and Immigration Services (USCIS) to advise the Petitioner of the derogatory information and to offer the petitioner an opportunity to rebut the information and present information on his or her own behalf. See *Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995) (a summary of the grounds of the Service’s revocation provided sufficient notice to the petitioner because “the regulations do not mandate an opportunity to view each and every statement”); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (in accord).

Accordingly, the Petitioner incorrectly asserts that she had no prior notice, and that she must be provided a copy of the actual derogatory evidence. The Director’s RFE and decision provided her with a detailed account of the derogatory information, but the Petitioner has chosen not to address her [REDACTED] 2014, statement to ICE on appeal. The Petitioner does not otherwise explain on appeal why the Director’s decision was incorrect based on an erroneous conclusion of law or statement of fact.

2. Insufficiency of Evidence

In her statements, the Petitioner asserted that she met her spouse, F-M-, in 2005, they entered into a relationship, F-M- proposed to her on [REDACTED] 2011, and they married on [REDACTED] 2012. She asserted that approximately one month after the marriage, they were making plans for an intimate dinner but her husband disparaged her looks, “menacing stalked” [sic] to where the Petitioner was standing, and told her that he did not “want to see dead horse[’]s hair on his wife’s head.” According to the Petitioner, they had several disagreements after this incident and F-M- began controlling her movements, and complaining about the time she spent at school instead of staying home with him.

The Petitioner submitted her marriage certificate, which shows that she married F-M- but does not establish her intentions at the time she entered into marriage with him or that she resided with him after the marriage. The Petitioner also provided bank documents, which reflect that F-M- had an account and that the Petitioner had a power of attorney over the account; however, the Petitioner was not listed on the account and does not otherwise appear to have used it. The Petitioner provided evidence that she was listed as the beneficiary of F-M-’s life insurance, but the document predates their marriage and there is no evidence that the policy continued after their marriage. The Petitioner

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also submitted evidence that F-M- added her to his roadside assistance plan and listed her as having power of attorney over him in a living will. These documents tend to indicate F-M-'s intentions toward the Petitioner, but F-M-'s intentions are not relevant; the Petitioner must establish that she married F-M- in good faith.

The Director denied the VAWA petition, advising the Petitioner that she had provided insufficient evidence to establish that she resided with F-M-, that F-M- battered her or subjected her to extreme cruelty, and that she entered into marriage with F-M- in good faith. Specifically, the Director advised the Petitioner that her [REDACTED] 2014, statement to ICE claiming that they never resided together contradicted the claims within her VAWA petition to have resided with F-M-, to have been battered or subjected to extreme cruelty by F-M- while they resided together, and to have entered into marriage with F-M- in good faith. Because the Petitioner undermined her own credibility, the Director concluded that the evidentiary weight of her statements was diminished, and the Petitioner had submitted insufficient evidence to establish her eligibility on these grounds. On appeal, the Petitioner has not addressed her [REDACTED] 2014, statement or provided additional probative evidence sufficient to establish that she resided with F-M-, was battered or subjected to extreme cruelty by F-M-, and that she entered into marriage with F-M- in good faith. Accordingly, the petition remains denied.

III. CONCLUSION

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of G-W-W-*, ID# 17646 (AAO Aug. 2, 2016)