



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

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

MATTER OF K-P-

DATE: FEB. 22, 2016

CERTIFICATION 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 Acting Director, Vermont Service Center, denied the petition and the Petitioner subsequently filed an appeal. In our appellate decision, we withdrew the Director's decision but remanded the matter to the Director for further proceedings on separate issues, instructing the Director to certify any subsequent adverse decision to us. The matter is again before us on certification. The initial decision of the Director will be affirmed, and the petition will be denied.

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).

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 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)(1), which provides, 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].

....

(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.

....

(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.

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.

....

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser

....

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, school

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records, hospital or medical records, 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. . . . 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.

With regard to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(b)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under . . . section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, [U.S. Citizenship and Immigration Services (USCIS)] will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration . . . status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner married N-W-,¹ who the Petitioner claims is a U.S. citizen, on [REDACTED], 2010. The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on May 13, 2011, based on her marriage to N-W-. The Director denied the Form I-360 on November 7, 2013, finding that the Petitioner did not establish that she entered into the marriage with N-W- in good faith. The Petitioner timely appealed the denial of the Form I-360. In our decision on appeal, dated December 1, 2014, we found that the preponderance of the relevant evidence established that the Petitioner married N-W- in good faith and we withdrew the Director's decision to the contrary. However, we concluded that the preponderance of the relevant evidence did not establish that the Petitioner resided with N-W- during their marriage; had a qualifying relationship with a U.S. citizen;

¹ Name withheld to protect the individual's identity.

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or was a person of good moral character. Accordingly, we remanded the matter to the Director for further proceedings and instructed the Director to certify any subsequent adverse decision to us.

In relation to our remand, on February 3, 2015, the Director issued a request for evidence (RFE) that the Petitioner resided with N-W- during their marriage, had a qualifying relationship with a U.S. citizen, and is a person of good moral character. The Petitioner responded to the RFE on May 1, 2015, with additional evidence. The Director found the additional evidence insufficient to overcome the additional grounds of denial and certified the matter to us. The matter is again before us on certification. On certification, the Petitioner submits a brief and additional evidence. The initial decision of the Director is affirmed, and the Form I-360 will be denied. Our previous decision is incorporated herein by reference.

III. ANALYSIS

A. Joint Residence

Our *de novo* review of the record of proceedings, including the additional evidence submitted by the Petitioner in response to the RFE on remand and upon certification to us, does not lead to a conclusion that the Petitioner resided with N-W- during their marriage.

In response to the RFE on remand, the Petitioner submitted a personal statement, dated April 30, 2015, in which she acknowledges that she does not have “any hard evidence other than what [she has] provided that shows that we lived together.” In this personal statement, the Petitioner refers to affidavits from [REDACTED] W-P-,² and [REDACTED] which she submitted in response to an RFE issued by the Director on March 6, 2013, as evidence of her “residence arrangements” while married to N-W-.

However, the affidavits to which the Petitioner refers do not provide any probative details of her joint residency with N-W-. [REDACTED] indicates that he was aware that the Petitioner and N-W- had separate residences during their marriage and that he visited the Petitioner’s residence during the marriage but that he only observed N-W- visit the Petitioner’s residence on one occasion, shortly after the Petitioner consumed a high volume of sleeping pills. There is no indication in [REDACTED] affidavit that he ever visited the Petitioner and N-W- at N-W-’s residence and, accordingly, his affidavit does not provide any information relevant to whether the Petitioner jointly resided with N-W- during their marriage. W-P-, the Petitioner’s son, indicates in his affidavit that the Petitioner would spend the night at N-W-’s residence before she and N-W- married but he does not explain his mother and N-W-’s living arrangement after the wedding or provide any details regarding whether she and N-W- jointly resided during their marriage. [REDACTED] indicates that the Petitioner “kept her apartment when [her sons] arrived” in the United States, which was prior to her marriage to N-W-, and that she would spend nights at N-W-’s residence, but he does not indicate whether that arrangement continued during her marriage to N-W- and nor does he describe

² Name withheld to protect the individual’s identity.

any visit, interaction, or social occasion with the Petitioner and N-W- at either residence or otherwise address the couple's joint residence.

In her personal statement submitted on remand, the Petitioner notes that the leases for her apartment and N-W-'s apartment were only in each of their names because they leased their apartments individually prior to their marriage. The Petitioner also provides the addresses and describes the interiors of each apartment, but her knowledge of the addresses and interiors of the apartments does not confirm her joint residence with N-W- during their marriage at either apartment. She also states in her affidavit that she and N-W- "lived together, cook together, shower together, and tried to have a normal life in the apartment [N-W-] had leased before we were married" but her description of their living arrangement before and after they married indicates that she made periodic visits to N-W-'s residence but that they did not share a joint residence. Residence is defined in section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), as a person's "place of general abode," which means the person's "principal, actual dwelling place in fact, without regard to intent." The plain language of the Act indicates that a principal, actual dwelling place must be a singular location. The preponderance of the relevant evidence does not demonstrate that the Petitioner resided with N-W- during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Qualifying Relationship

Our *de novo* review of the record, including the additional evidence submitted by the Petitioner in response to the RFE on remand and upon certification to us, leads us to conclude that the Petitioner has a qualifying spousal relationship with a U.S. citizen.

In her personal statement submitted on remand, the Petitioner confirmed that she does not possess N-W-'s birth certificate and that he used a false name when he married her. She also provided on remand records which she claims establish that N-W-'s real name is D-R-P-³ and that he was convicted under that name of several crimes in Texas. The Director acknowledged in the notice of certification that N-W- is also known as D-R-P- but that the evidence did not establish D-R-P-'s U.S. citizenship. On certification, the Petitioner provides additional records from the Texas Department of Criminal Justice regarding D-R-P-'s incarceration. The evidence in the record of proceedings establishes, by a preponderance of the evidence, that D-R-P- is a U.S. citizen, and the Petitioner has established a qualifying relationship with a U.S. citizen and her eligibility for immediate relative classification as required by section 204(a)(1)(A)(iii)(II)(aa), (cc) of the Act. We withdraw the contrary determinations on this issue.

C. Good Moral Character

Our *de novo* review of the record of proceedings, including the additional evidence submitted by the Petitioner in response to the RFE on remand and upon certification to us, does not lead to a conclusion that the Petitioner is a person of good moral character.

³ Name withheld to protect the individual's identity.

In response to the RFE that the Director issued after our remand of the matter, the Petitioner submitted a copy of what she claims is a police clearance letter from France, where she lived for at least six months during the three-year period immediately preceding the filing of the Form I-360. In her personal statement submitted in response to the RFE she indicated that she is in the process of obtaining an original of the document.

In the notice of certification, the Director indicates that this document appears to relate to the Petitioner's criminal history in France but that, without a translation of the document, USCIS cannot determine the content of the document. The Director further concluded that the Petitioner had not submitted documents sufficient to establish her good moral character. On certification, the Petitioner's counsel indicates that he has been unable to contact the Petitioner to obtain a translation of the document but that a "plain reading" of the document shows that it relates to the Petitioner and "does not list anything even remotely appearing to be a criminal charge or conviction" and, on that basis, "[a]n English translation is not essential." Contrary to counsel's assertion, an English translation is required by 8 C.F.R. § 103.2(b)(3), which provides that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

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 May 2008 and ending in May 2011). The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that, if police clearances, criminal background checks, or similar reports are not available, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Petitioner, however, has not addressed whether she has ever been arrested or convicted of a criminal offense in France, submitted local police clearances or state-issued criminal background checks with the required English translations, or provided an explanation for the lack of such a clearances or background checks for the requisite period. Accordingly, the Petitioner has not established her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. CONCLUSION

The Petitioner has established that her spouse is a U.S. citizen, but she remains ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because the record lacks evidence that she resided with her spouse during their marriage and is a person of good moral character.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the Form I-360 is denied.

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ORDER: The initial decision of the Director, Vermont Service Center, is affirmed, and the petition is denied.

Cite as *Matter of K-P-*, ID# 15777 (AAO Feb. 22, 2016)