



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

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

MATTER OF J-R-T-

DATE: JAN. 6, 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 United States 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, revoked approval of the petition after properly notifying the Petitioner. The matter is now before us on appeal. The Director's decision will be withdrawn and the matter remanded for entry of a new decision.

I. APPLICABLE LAW

Section 205 of the Act states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

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.

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 explicated 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.

The evidentiary guidelines 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.

....

(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-

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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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, initially claimed to have last entered the United States on November 20, 2001, without admission, inspection or parole. The record indicates that immigration officials encountered the Petitioner attempting to enter the United States on October 25, 2002, using another individual's identity documents. The Petitioner was issued an order of removal and removed from the United States pursuant to section 235(b)(1) of the Act on October 26, 2002, under a different false name. On appeal, the Petitioner asserts that she only entered the United States on one occasion in October 2002.

The Petitioner married A-C-¹, a naturalized U.S. citizen, on [REDACTED] 2011, in California. She filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on March 25, 2013, based on her relationship with A-C-. The Director approved the Form I-360 on November 4, 2013, but subsequently issued a notice of intent to revoke (NOIR) approval of the petition, notifying the Petitioner that the Form I-360 was granted in error, as a full review of the administrative record disclosed that the Petitioner had previously provided false testimony under oath and that her statements were not sufficient to establish the requisite battery and extreme cruelty. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director revoked approval of the petition and the Petitioner timely appealed. On appeal, the Petitioner submits an updated personal statement.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has overcome the Director's ground for revocation. The Director's decision will be withdrawn and the matter remanded for entry of a new decision for the reasons set forth below.

¹ Name withheld to protect the individual's identity.

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A. Revocation of the Form I-360 Was Improper

The record does not demonstrate good and sufficient cause to support the Director's determination that the Petitioner was not credible and to revoke the Petitioner's approved Form I-360. The Director determined that the Petitioner was not credible because the record showed that immigration officials encountered the Petitioner attempting to enter the United States using someone else's identity and that thereafter she provided a statement under oath to immigration officers using a different false identity. The Director's decision further noted inconsistencies between the Petitioner's response to the NOIR regarding the circumstances of why she sought to enter the United States in 2002 and her statements to immigration officials in 2002. For instance, according to the Petitioner's 2002 sworn statement, she sought to come to the United States to see what it was like here and stole a passport from someone for that purpose; however, in response to the NOIR, the Petitioner submitted a psychological evaluation from [REDACTED] Ph.D, a licensed marriage and family therapist, in which she indicated that was fleeing an individual who had raped her and stole the passport from her sister to gain admission to the United States. Based on the foregoing, the Director found the Petitioner not credible, and consequently, determined that any evidence relying solely on the Petitioner's statements was insufficient to establish the requisite battery or extreme cruelty.

Upon *de novo* review, we disagree with the Director's adverse assessment of the Petitioner's credibility. We find that the Petitioner's misrepresentations to immigration officials over thirteen years ago in seeking admission into the United States is not good and sufficient cause to discredit, in their entirety, the Petitioner's statements in these proceedings regarding the claimed battery and extreme cruelty. We also do not find the inconsistencies noted by the Director as so egregious as to constitute a sufficient basis to revoke approval of the Form I-360. On appeal, the Petitioner reasonably explains that she attempted to enter the United States using her sister's passport to flee her rapist, but that she did not tell immigration officials during her 2002 interview because she was under a lot of stress and frightened because her attacker had threatened to kill her if she revealed what had happened. The Petitioner maintains that she entered the United States only once in 2002, and acknowledges her error in mistakenly putting 2001 as her date of entry on her petition and prior statement, noting that these events took place thirteen years ago and she did not recall everything that happened. Based on our review of the record, the Petitioner's misrepresentations in 2002 and the inconsistencies cited by the Director have been reasonably explained by the Petitioner and do not go to the heart of the Petitioner's claim in these proceedings. Consequently, they do not undermine the evidentiary value of the evidence of battery or extreme cruelty.

The relevant evidence submitted below and on appeal demonstrates that the Petitioner's spouse, A-C-, subjected her to battery or extreme cruelty during their marriage. In her written statements, the Petitioner described her relationship with A-C- since its inception in approximately September 2003, asserting that A-C- physically and emotionally abused her. Her statements set forth in probative detail a domestic violence incident on [REDACTED] 2009, between A-C- and the Petitioner following a verbal dispute. The Petitioner recounted how their verbal dispute escalated after A-C- told her he was leaving her and threatened to take their child with him. She recalled that A-C- yelled at her and insulted her after she opposed him, began beating and pushing her, and at one

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point, dragged her to the bathroom, throwing her inside the tub, and hit her with a closed fist. The Petitioner stated that she managed to go to a neighbor's place and called the police. The record contains a corroborating police report from [REDACTED] 2009, indicating that A-C- was arrested on charges of battery and unlawfully and maliciously damaging a telephone line. Although this incident occurred prior to their [REDACTED] 2011 marriage, it supports the Petitioner's claim that A-C- subjected her to extreme cruelty throughout her relationship with him, both before and after their marriage. *See generally* 8 C.F.R. § 204.2(c)(2)(iv) (recognizing that documentary proof of non-qualifying abuses could be used to establish a pattern of abuse and to support a claim that qualifying abuse also occurred). Even apart from the 2009 incident, however, the Petitioner sufficiently described how even after their [REDACTED] 2011 marriage, A-C- continued to verbally mistreat her, use her unlawful status against her, and threaten to take their daughter away from her.

The remaining relevant documentary evidence includes a psychological evaluation and supporting letters from [REDACTED] and the Petitioner's religious education director, all of which, considered cumulatively with the Petitioner's probative and detailed statements, demonstrate the requisite battery or extreme cruelty. In her psychological evaluation, [REDACTED] Ph.D, a licensed marriage and family therapist, determined that the Petitioner suffers from Posttraumatic Stress Disorder as a result of the domestic violence she suffered, including verbal, emotional, and financial abuse after the couple's 2011 marriage. [REDACTED] report also repeated the Petitioner's account of the 2009 incident that was consistent with the Petitioner's statements in the record.

The letter from the Petitioner's family acquaintance, [REDACTED] provided substantive information about the claimed abuse both before and after the Petitioner's marriage to A-C-. [REDACTED] recalled an occasion when she visited the Petitioner's home to find the latter distressed and crying. She stated that the Petitioner told her that A-C- had verbally abused her and threatened to take away their child and report the Petitioner to immigration authorities. She confirmed that on a separate occasion, the Petitioner told her that she contacted the authorities after A-C- beat the Petitioner during another incident. Although [REDACTED] indicated that the physical abuse stopped following the couple's marriage, she stated that the ongoing verbal abuse by A-C- continued. The Petitioner's friend, [REDACTED] indicated that the Petitioner asked her to come to the Petitioner's home following A-C-'s arrest and that she was present when A-C- called the Petitioner and threatened her over the phone while he was still in custody. She was also present after A-C-'s release from prison when he threatened to have the Petitioner deported and separated from their child if she had him arrested again. [REDACTED] stated that following the couple's marriage, A-C- did not beat his wife but claimed that the Petitioner told her that he continued to verbally abuse and threaten her. A letter from [REDACTED] the religious education director at the Petitioner's parish, confirmed that the Petitioner approached him for spiritual help as a victim of domestic violence sometime in 2010. Although the Petitioner acknowledged that A-C- had not physically abused her since their marriage, her probative statements and the supporting statements in the record, considered cumulatively, demonstrate that A-C-'s behavior during their marriage involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

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Accordingly, *de novo* review of the relevant evidence does not show good and sufficient cause to revoke approval of the petition. The Petitioner's misrepresentations to immigration officials over thirteen years ago and the inconsistencies in her statement regarding why she sought admission to the United States do not go to the heart of the abuse claim at issue here and the Director's reliance on such to discredit entirely the Petitioner's probative and detailed account of the battery and extreme cruelty to which she was subjected is not reasonable. When viewed in the totality, the preponderance of the evidence establishes that A-C- subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act, and the Director's decision to the contrary is withdrawn.

B. Good Moral Character

Notwithstanding our withdrawal of the Director's determination, the petition is not approvable because the record does not establish the Petitioner's good moral character. 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 petition (in this case, during the period beginning in March 2010 and ending in March 2013).

The Petitioner submitted a local criminal history search from [REDACTED] where she has resided since 2005, indicating that there were no criminal records under the Petitioner's name, [REDACTED]" and her corresponding date of birth. The Petitioner also submitted a conviction record reflecting her conviction, under a false identity, for identity theft in violation of section 530.5(a) of the California Penal Code on [REDACTED] 2003. She was sentenced to probation.

In the request for evidence issued on August 16, 2013, the Director specifically notified the Petitioner that if the police clearances were searched by name only, that she was required to supply the agency conducting the search with any and all names previously used. The record shows that the Petitioner has used various different aliases in the past, including when she sought admission to the United States, at the time she provided a sworn statement to immigration officials, and when she was arrested and convicted in 2003. As noted, the Petitioner provided the results of a local police clearance search, which confirm that the search was only conducted on her name and date of birth and was not based on a fingerprint search or under all her aliases. Accordingly, the Petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The matter is therefore remanded to the Director to issue a request for evidence for the required state or local police clearances based on the Petitioner's fingerprints or on a search of all her aliases.

IV. 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, the Petitioner has overcome the Director's basis for revocation. However, the

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petition is not approvable as the record does not contain the required local or state clearances to establish the Petitioner's good moral character. The matter will therefore be remanded to the Director for further action and issuance of a new decision.

ORDER: The decision of the Director, Vermont Service Center is withdrawn. The matter is remanded to the Director, Vermont Service Center 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 J-R-T-*, ID# 14795 (AAO Jan. 6, 2016)