



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

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

MATTER OF N-K-U-K-

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 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, 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.

**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 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. An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) 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:

(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:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(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].

The evidentiary guidelines are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent parts:

(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 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 both the self-petitioner and the abuser[.]

....

(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.

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

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*Assisting self-petitioners who are spousal-abuse victims.* If a self-petitioner filing a petition under section . . . 204(a)(1)(B)(ii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, 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 or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Uzbekistan, last entered the United States as a J-1 nonimmigrant on June 7, 2012. He married M-S-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2013, in Pennsylvania. They were divorced on [REDACTED] 2013. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 28, 2014, based on his relationship with M-S-. The Director subsequently issued a request for evidence (RFE) establishing, among other things, the Petitioner's qualifying relationship with a U.S. citizen. The Petitioner submitted additional evidence in response to the RFE, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the petition after concluding that the Petitioner had not established M-S-'s U.S. citizenship and thus, did not demonstrate a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act. On appeal, the Petitioner submits a brief and additional evidence.

## 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 denial. However, the petition is not approvable because the record does not establish the Petitioner's good moral character. The Director's decision will be withdrawn and the matter remanded for entry of a new decision for the reasons set forth below.

### A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director correctly determined that the record below did not establish a qualifying spousal relationship with a U.S. citizen and the Petitioner's corresponding eligibility for immediate relative classification. Although the record included copies of the Petitioner and M-S-'s marriage certificate and evidence of the latter's social security number, it did not contain evidence of M-S-'s U.S. citizenship. In addition, the record did not contain evidence of the termination of M-S-'s first marriage as required. *See* 8 C.F.R. § 204.2(c)(2)(ii). On appeal, the Petitioner asserts that United States Citizenship and Immigration Services (USCIS) applied an overly restrictive standard in determining whether the Petitioner had established a qualifying spousal relationship and that it was obligated to

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

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verify the immigration status of an abusive spouse. While we acknowledge USCIS' obligation under 8 C.F.R. 103.2(b)(17)(ii) to verify an abuser's status where possible, we note the regulation authorizes the agency to check its own records and those under the Department of Homeland Security, which typically do not maintain birth records for U.S. citizens by birth. Our review also does not disclose that the Director applied a standard more restrictive than the preponderance of the evidence applicable in these proceedings. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (As in all immigrant visa petitions, a petitioner must demonstrate his or her eligibility by a preponderance of the evidence).

On appeal, the Petitioner submits a certified copy of M-S-'s marriage license in which she declared, under oath, that she was born in the United States, and listed the names of both her parents and their corresponding dates and places of birth. In addition, she proffers information relating to M-S-'s voter registration in her county of residence in Pennsylvania. We have electronically verified M-S-'s U.S. citizenship based on the Petitioner's submission of secondary evidence. *See* 8 C.F.R. 103.2(b)(17)(ii). Accordingly, the Petitioner has established that his former spouse is a United States citizen. The Petitioner also submitted a copy of M-S-'s divorce decree for her prior marriage, demonstrating that her subsequent marriage to the Petitioner was legally valid.

Although the Petitioner's marriage to M-S- was already terminated at the time he filed his Form I-360, he established the requisite qualifying spousal relationship because he filed the petition within two years of his [REDACTED] 2013 divorce and the record demonstrates a connection between the legal termination of the marriage within the two years and the battery or extreme cruelty<sup>2</sup> by the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The Petitioner has therefore demonstrated a qualifying relationship with a U.S. citizen and consequently, his corresponding eligibility for preference immigrant classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The Director's determination 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 a 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 July 2011 to July 2014). Where a petitioner resided outside the United States, the requisite police clearance, criminal background check, or similar report should be issued by the appropriate authority in each foreign country in which the petitioner has resided for six or more months during the three-year period prior to the filing of the Form I-360.

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<sup>2</sup> The Director concluded that the Petitioner had established all the remaining eligibility criteria, including the requisite battery or extreme cruelty. Based on our review, the record supports the Director's determination.

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The record below contains a state criminal record check for the Petitioner from the Pennsylvania State Police. However, the Petitioner's Form G-325A, Biographic Form, indicates that he resided in [REDACTED], Uzbekistan, for over six months from August 2011 through June 2012, during the three-year period immediately prior to the July 2014 filing of his Form I-360. The record does not, however, include the required clearances from the appropriate foreign authority in Uzbekistan, as set forth in 8 C.F.R. § 204.2(c)(2)(v).

Accordingly, the Petitioner has not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. However, as the Director's RFE did not notify the Petitioner of this requirement or request the foreign clearances, the matter is therefore remanded to the Director to request the required foreign clearances and for issuance of a new decision.

#### 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. at 128. Here, the Petitioner has overcome the Director's grounds for denial. The Petitioner has established a qualifying relationship with a U.S. citizen as required and corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act. However, the petition is not approvable as the record does not contain the required foreign criminal 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 N-K-U-K-*, ID# 14911 (AAO Jan. 6, 2016)