



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

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

MATTER OF M-E-M-

DATE: JUNE 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, denied the petition. The Director concluded that approval of the petition was barred pursuant to section 204(g) of the Act because the Petitioner married his spouse while in removal proceedings and did not demonstrate eligibility for the *bona fide* marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1225(e), and immediate relative classification.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he entered into the marriage with his spouse in good faith.

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.

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].

....

- (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act
- (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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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 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.
....
- (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. 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.

.....

- (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 record indicates that the Petitioner was in removal proceedings at the time of the marriage upon which the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), is based. In such a situation, section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the Petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of his VAWA petition unless the Petitioner can establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act. The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings – general prohibition against approval of visa petition.
A visa petition filed on behalf of an alien by a United States citizen . . . shall not be

approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)[8] of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

- (A) *Request for exemption* The request must be made in writing . . . The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

- (B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:
 - (1) Documentation showing joint ownership of property;
 - (2) Lease showing joint tenancy of a common residence;
 - (3) Documentation showing commingling of financial resources;
 - (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;
 - (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
 - (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

(b)(6)

Matter of M-E-M-

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

The Petitioner was placed in removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a, on January 30, 2012, and married J-L-¹ a U.S. citizen, in ██████████ Florida, ████████ months later on ██████████ 2012. Because the Petitioner married J-L- while in removal proceedings, he must not only demonstrate that he married J-L- in good faith by a preponderance of the evidence to meet the eligibility criterion at section 204(a)(1)(A)(iii)(I)(aa) of the Act, but also that he married in good faith under the heightened “clear and convincing” standard of proof required to meet the exception at section 245(e)(3) of the Act. *See Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

A. Entry into Marriage in Good Faith

On appeal, the Petitioner asserts that the denial of his VAWA petition is in error because the Petitioner and J-L- were in a relationship prior to their marriage and the Petitioner could not obtain documents verifying that he entered into the marriage with J-L- in good faith due to financial and emotional abuse of the Petitioner by J-L-.

In the personal statement he submitted in response to the RFE, the Petitioner states that he and J-L- were in a relationship from 1992 to 1996 and they met again in 2010 and resumed a relationship. He explains that, during their relationship, J-L- lived in Georgia and he lived in Florida but they would see each other approximately twice each month, they vacationed once together, and he proposed to J-L- in July 2012 during one of her visits to see him in Florida. The Petitioner also claims that he moved to Georgia in December 2012 to live with J-L- following their wedding, although he indicates on the VAWA petition that they lived together starting in November 2012. While his personal statement provides a chronology of his relationship with J-L-, he does not describe their residence, living arrangements, any shared belongings, or residential routines. The Petitioner also does not further describe any specific occasions spent together during the couple’s courtship and engagement, his feelings for J-L- or his intent in marrying her, or provide probative details of their marriage ceremony.

The regulation at 8 C.F.R. § 204.2(c)(2)(vii) provides that petitioners may submit testimony or other evidence regarding a couple’s courtship, wedding ceremony, shared residence and experiences to establish entry into a marriage in good faith, and the regulation indicates that “[o]ther types of readily available evidence might include the birth certificates of children born to the abuser and the

(b)(6)

Matter of M-E-M-

spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship.” The letters submitted on the Petitioner’s behalf do not address the Petitioner’s and J-L-’s relationship, married life, and residences, or contain any detailed information to establish the Petitioner’s good-faith entry into his marriage. In her letter, the Petitioner’s friend, S-R-B-, states:

I know [the Petitioner] personally and I know that [he] and [J-L-] married out of love. I know this because he spoke very eloquently about her and he was very excited about their marriage. I was not able to attend the ceremony when they were married on [REDACTED] but we spoke about it on numerous occasions.

The weight of this letter is diminished, however, because S-R-B- spells [J-L-]’s given name incorrectly and provides the incorrect date for their wedding; she also does not describe the Petitioner’s and J-L-’s relationship, their married life and residence, or provide any detailed information to establish the Petitioner’s good-faith entry into his marriage. The letter from J-P-, who indicates that the Petitioner is her godson, does not mention J-L- or whether the Petitioner is married. In sum, the letters submitted by the Petitioner do not provide sufficient information to establish that the Petitioner entered into his marriage with J-L- in good faith.

Similarly, the uncaptioned and undated photographs submitted by the Petitioner do not establish that the Petitioner entered into his marriage with J-L- in good faith. The photographs reflect that the Petitioner and J-L- were photographed together on several occasions. Several of the photographs submitted show the Petitioner and J-L- socializing on a variety of occasions by themselves and with other persons; however, they do not establish that the Petitioner entered the marriage with J-L- in good faith.

The text messages and emails submitted by the Petitioner also do not establish that the Petitioner entered into his marriage with J-L- in good faith. They indicate that the Petitioner and J-L- were in a relationship, but they do not provide detailed insights into their courtship, wedding ceremony, shared residence, and experiences, sufficient to establish that the Petitioner entered the marriage with J-L- in good faith. In addition, while the text messages indicate that J-L- gave birth to a child and an incident/offense report prepared by the [REDACTED] Sheriff’s Office indicates that J-L- reported that she was pregnant and the Petitioner is the father, the Petitioner has not submitted a birth certificate or other evidence that he and J-L- have a child together. The Petitioner indicates on the VAWA petition that he has a child that was born during his marriage to J-L- but he does not mention the child or the circumstances of the birth in his personal statement.

The Petitioner has not provided sufficient detailed information regarding his marital intentions and relationship to establish his good-faith intent in marrying J-L-. The conflicting information provided by the Petitioner with respect to his financial arrangements with J-L-, coupled with the absence of any descriptions of their courtship, wedding ceremony, shared residence, routines, and experiences, are not sufficient to meet the Petitioner’s burden. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that he entered into his marriage with J-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Section 204(g) of the Act

The Petitioner asserts on appeal that section 204(g) of the Act does not apply to his VAWA petition because he and J-L- were in a relationship before he was placed into removal proceedings and, therefore, he did not marry J-L- in order to circumvent the immigration laws. Although the circumstances surrounding a couple's meeting and decision to marry are factors that we consider in determining whether a petitioner married in good faith, the section 204(g) bar to approval is triggered when a marriage occurs during removal proceedings, regardless of when the relationship between the married couple began.

As the Petitioner has not established his good-faith entry into the marriage with J-L- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has not established his eligibility for the *bona fide* marriage exemption under the heightened "clear and convincing evidence" standard of proof required by section 245(e)(3) of the Act. "Clear and convincing evidence" is a more stringent standard. *Arthur, supra*, at 478.

C. Eligibility for Immediate Relative Classification

As the Petitioner is not exempt from section 204(g) of the Act, he also has not demonstrated his eligibility for immediate relative classification based on his relationship to J-L-. See section 204(a)(1)(A)(iii)(II)(cc) of the Act; 8 C.F.R. § 204.2(c)(1)(iv).

D. Joint Residence

We also determine that the Petitioner does not establish by a preponderance of the evidence that he resided with J-L- during their marriage.² As discussed above, the Petitioner's personal statement and the letters submitted on his behalf do not provide sufficiently detailed information regarding his shared residences, routines, and experiences with J-L-. Moreover, the Petitioner provides inconsistent information regarding the dates he resided with J-L-; he claims in his personal statement that he moved to Georgia in December 2012 to live with J-L- but he indicates on the VAWA petition that they lived together starting in November 2012. Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with J-L- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

E. Good Moral Character

Finally, we determine that the Petitioner does not establish by a preponderance of the evidence that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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 a VAWA petition. The Petitioner did not submit an affidavit attesting to his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). Because he did not submit the required affidavit, the Petitioner has not established his good moral character. See section 204(a)(1)(A)(iii)(II)(bb) of the Act.

In addition, the record of proceedings contains evidence of the Petitioner's repeated arrests and convictions from 1998 to 2014, such as driving with his license suspended or revoked; a conviction for being a habitual offender of driving with a suspended license; multiple arrests for driving with a license plate not assigned to him; an arrest for resisting an officer; an arrest for failure to appear in court; a probation violation; and a conviction for marijuana possession.

Our review of this evidence demonstrates that the Petitioner is not a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(1)(vii), "[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. . . ." A person who is not specifically barred from establishing good moral character under a particular subsection 101(f) of the Act does not "preclude a finding that for other reasons such person is or was not of good moral character." Section 101(f) of the Act.

The Petitioner's multiple convictions and arrests constitute behavior that falls below the standards of the average citizen in the community pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Therefore, we determine that "for other reasons" the Petitioner is not a person of good moral character pursuant to section 101(f) of the Act, and he consequently cannot meet section 204(a)(1)(A)(iii)(II)(bb) of the Act.

III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not demonstrated by a preponderance of the evidence that: he married his spouse in good faith; he resided with her; and he is a person of good moral character. The Petitioner also did not demonstrate that he met the clear and convincing standard for the *bona fide* marriage exemption from the bar to approval at section 204(g) of the Act, and therefore, also did not demonstrate his eligibility for immediate relative classification. Accordingly, we must dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-M-*, ID# 17081 (AAO June 29, 2016)