



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

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

MATTER OF J-A-C-

DATE: MAR. 23, 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). 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 the Petitioner did not establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse, and that he is a person of good moral character.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that his U.S. citizen spouse subjected him to battery and extreme cruelty and that he is a person of good moral character.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), provides:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character . . . if

the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

Section 204(a)(1)(J) of the Act 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].

In regards to determining a petitioner's good moral character, section 101(f) of the Act states in pertinent part:

The fact that any person is not within any of the foregoing classes [101(f)(1) through (f)(9)] shall not preclude a finding that for other reasons such person is or was not of good moral character

The eligibility requirements are explained further 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.

(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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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-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.

(b)(6)

Matter of J-A-C-

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner was born in Great Britain and last entered the United States on April 25, 2006, as a B-2 nonimmigrant visitor. He married his U.S. citizen spouse, S-M-¹ on [REDACTED], 2012, in [REDACTED] Florida. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 15, 2014. On February 11, 2015, the Director issued a request for evidence (RFE) of, among other things, S-M-'s battery or extreme cruelty toward the Petitioner and of the Petitioner's good moral character. The Petitioner responded, but the Director found the response insufficient to establish the Petitioner's eligibility and denied the Form I-360 on these grounds. The Petitioner filed an appeal.

III. ANALYSIS

A. Battery or Extreme Cruelty

In his December 2, 2014, affidavit and in the undated affidavit he provided in response to the RFE, the Petitioner described S-M-'s behavior and instances of abuse after their marriage, which included kicking and punching him while she was drunk, swearing, and continuing to drink while around the Petitioner, even after the Petitioner had been hospitalized for illness related to his own alcohol abuse and asked her not to drink around him. The Petitioner described an occasion when S-M- physically assaulted him with scissors after an argument. The Petitioner described repeated incidents of fighting and abuse, claiming that one episode resulted in S-M- having the Petitioner falsely arrested for battery.

The Petitioner also submitted letters from friends and family who described having S-M- physically control their access to the Petitioner, and preventing them from maintaining contact with him. The Petitioner's former landlord described witnessing S-M- verbally abuse the Petitioner in front of friends and in the transient motel in which they lived and at which the Petitioner worked. One of the Petitioner's friends who also was his neighbor at the transient motel, similarly discussed witnessing S-M-'s verbal abuse as well as describing an incident of S-M-'s physical abuse against the Petitioner.

The Petitioner submitted a psychological evaluation from a licensed psychologist, who described the abusive actions of S-M- that the Petitioner recounted to him and, "in addition to taking into consideration at face value the physical and verbal abuse," noted that the Petitioner's "life reflect[s] a decrease from his prior level of functioning," and wrote that the Petitioner appeared to have "common symptoms of depressive illness."

The Petitioner provided a 911 call log showing that the [REDACTED] Sheriff's Office came to the residence that he and S-M- shared based on a domestic violence related incident. The call log

¹ Name withheld to protect the individual's identity.

(b)(6)

Matter of J-A-C-

reflected that the Petitioner was the victim, that there were no arrests, and that the Petitioner indicated that he would not “prosecute” the offense.

On appeal, the Petitioner asserts that the Director did not give sufficient weight to the Petitioner’s statements and the independent psychological report and appeared to have incorrectly weighed evidence relating to the Petitioner’s good moral character when evaluating the evidence regarding S-M-’s abuse of the Petitioner. The Petitioner maintains that his evidence establishes S-M-’s battery of and extreme cruelty toward the Petitioner.

The Petitioner has provided sufficient evidence to establish that S-M- battered him and subjected him to extreme cruelty. As discussed, we have reviewed this case *de novo*, including the psychological evaluation and statements from the Petitioner, his family, and his friends. As it relates to the Petitioner’s claim of abuse, the statements of the Petitioner, his psychologist, family, and friends contain specific and probative details of his relationship with S-M- to establish that she battered the Petitioner and that her behavior constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner has provided sufficient evidence to demonstrate by a preponderance of the evidence that S-M- subjected him to battery and extreme cruelty. The Petitioner, therefore, has satisfied section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Good Moral Character

1. The Petitioner’s Criminal History

The Petitioner provided a criminal history disclosure from the Criminal Records Office of the Association of Chief Police Officers (ACPO) in the United Kingdom. The ACPO record reveals the Petitioner has the following record:

- On [REDACTED] 1991, the Petitioner was found guilty of Driving a Motor Vehicle with Excess Alcohol. He was fined £390.00 and disqualified from driving for 20 months. He was also found guilty of Driving Without Insurance and Taking Conveyance Without Authority and fined £50.00 for each offense.
- On [REDACTED], 2005, the Petitioner received a caution from [REDACTED] Police for an offense of Assault Occasioning Actual Bodily Harm. According to the ACPO record, the offense occurred over a period of 17 hours beginning on [REDACTED] 2005, at 18:00 hours and ending on [REDACTED], 2005, at 11 am.
- On [REDACTED] 2005, the Petitioner received a caution from the [REDACTED] Constabulary for Possession of Cannabis, a class C controlled drug.

The Petitioner also has the following criminal history record in the United States.

- On [REDACTED] 2013, the Petitioner was arrested in [REDACTED] Florida for Domestic Battery in violation of FLA. STAT. §784.03(1A1), a misdemeanor. [REDACTED] The Petitioner was released on his own recognizance on [REDACTED] 2014, and the charge was dropped on [REDACTED] 2014.

The Petitioner's administrative record also contains a Record of Sworn Statement that he made to a U.S. Citizenship and Immigration Services (USCIS) Immigration Services Officer (ISO) on December 16, 2013, in connection with the Form I-130, Petition for Alien Relative, which S-M- filed on his behalf. In his sworn statement, the Petitioner asserted that he had physically abused S-M- three times. The Petitioner signed his December 16, 2013, sworn statement under penalty of perjury, affirming in writing that his statement had been made "freely and voluntarily" and that his statements were "truthful and complete." In response to the ISO's question as to whether the Petitioner "felt coerced" during the interview by the ISO, the Petitioner responded "No, reasonable [sic] well." Although the Petitioner asserts in his December 2, 2014, statement that he signed the statement before the ISO only because he was terrified that the ISO would send him to jail, the Petitioner does not specifically disclaim his prior statement.

2. Unlawful Acts and the "Catch-all" Provision Under Section 101(f) of the Act

The record does not establish the Petitioner's good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

On appeal, the Petitioner suggests that the Director not take into consideration any arrests and convictions outside "the three to five year period" because it is only this period of time that should be the basis for evaluating his good moral character. Regarding criminal history that occurred outside of the three-year period prior to filing, although the regulation at 8 C.F.R. § 204.2(c)(2)(v) only requires evidence of a petitioner's good moral character during the three years preceding the filing of the Form I-360, it does not limit USCIS' inquiry into a petitioner's moral character to only this period. In fact, section 204(a)(1)(A)(iii) of the Act does not prescribe any specific time period during which a petitioner's good moral character must be established. Additionally, although the statutory provisions for self-petitioning abused spouses have been amended several times since the publication of the interim rule at 8 C.F.R. § 204.2(c), a final rule has not yet been promulgated. Notably, none of the statutory amendments have changed the temporal scope of the good moral character requirement for self-petitioning abused spouses.

The Petitioner also argues on appeal that USCIS erroneously failed to consider whether the Petitioner is subject to section 101(f) of the Act and, if so, whether his offenses are waivable. As indicated above, our determination regarding the Petitioner's good moral character is not based on any specific subsection of section 101(f) of the Act; rather, it is based upon the catch-all provision of the last paragraph of section 101(f) of the Act. Therefore, we do not need to make any determination regarding the applicability of waivers in this case. Even if any of the Petitioner's criminal acts or his conviction were subject to a waiver, he has not established his eligibility for a discretionary determination of his good moral character under section 204(a)(1)(C) of the Act. Specifically, the Petitioner has not established that any of his offenses were connected to S-M-'s abuse. Here, the Petitioner has a criminal history record that, with the exception of one offense in 2013, precedes his relationship with S-M- and therefore cannot have been the result of S-M-'s abuse.

In addition, the Petitioner does not claim that he committed these prior offenses under extenuating circumstances but rather focuses on the fact that he received a caution for the offenses and therefore

is not considered to have been convicted of the offenses of Possession of Cannabis and Assault Occasioning Actual Bodily Harm. Regardless, although we acknowledge that the Petitioner was in an abusive relationship with S-M- after he entered the United States, all three of his offenses in Great Britain preceded their relationship.

Primary evidence of good moral character is a petitioner's affidavit accompanied by police clearances or similar records. 8 C.F.R. § 204.2(c)(2)(v). The Petitioner submitted affidavits from himself and his acquaintances relating to his good moral character. In his own statement, the Petitioner indicated that he was convicted only of the 1991 offenses, but does not describe the circumstances surrounding any of his arrests. As it relates to his 2013 battery offense, the Petitioner claimed that S-M- falsely reported him and the record reflects that the charge was dropped. Although the Petitioner acknowledged his arrests and his own troubles with alcohol use, he does not, for example, include any discussion of his remorse or his rehabilitation with drugs and alcohol, or otherwise express accountability for the circumstances leading to his multiple arrests. Moreover, the character statements from the Petitioner's friends do not refer to or indicate knowledge of the Petitioner's arrest history. Further, although the Petitioner has submitted the ACPO record, that record does not provide sufficient detail regarding the Petitioner's arrests to make an affirmative finding regarding his good moral character. In the case of his arrest for cannabis, for example, a conviction of a drug-trafficking related offense is not necessary in order to determine that an individual is a member of a class described at section 212(a)(2)(C) of the Act, and therefore lacks good moral character under section 101(f)(3) of the Act.²

The record indicates that the Petitioner engaged in unlawful acts and conduct that falls below the average citizen in the community and adversely reflects upon his moral character under the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The Petitioner has therefore not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-A-C-*, ID# 15890 (AAO Mar. 23, 2016)

² We need not make any additional finding under section 101(f)(3) of the Act but note that if we did, there is no waiver for this ground of inadmissibility.