



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

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

MATTER OF C-S-N-

DATE: MAY 9, 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 the Petitioner had not established his good moral character and that his spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has established, through documentary evidence, that he was subjected to battery and extreme cruelty.

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 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 is divorced from an abusive U.S. citizen spouse 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 or the self-petitioner’s child, 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.

. . . .

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.

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(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.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Nigeria, who last entered the United States in [REDACTED] Georgia, as an F-1 nonimmigrant student. The Petitioner wed A-E-<sup>1</sup> a U.S. citizen and were later divorced. Subsequently, the Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. As the initial record was insufficient to establish the Petitioner's eligibility, the Director issued a request for evidence (RFE), of among other things, the Petitioner's good moral character and requisite battery or extreme cruelty. The Petitioner timely responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

## III. ANALYSIS

### A. Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner was subjected to battery or extreme cruelty by A-E-. In support of the Form I-360, the Petitioner submitted a personal statement and a copy of a letter from [REDACTED]. In response to the RFE, the Petitioner submitted a personal statement, a statement from friend, [REDACTED] and a copy of an assessment from [REDACTED].

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

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In his first personal statement, the Petitioner stated that he met his wife in [REDACTED] Georgia. He recalled that they were together for almost a year before they wed. He recounted that everything was fine at the beginning of their marriage, but that things began to change after A-E- lost her job and started working at [REDACTED] his place of employment. He recounted that A-E- would go into work earlier than when her shift began and that she was continuously texting. The Petitioner recounted that when he asked A-E- about her new texting habits, she became "abusive" towards him. The Petitioner recalled that once, on their way back from a visit to her parents in Georgia, A-E- ignored him during the entire ride home, but continuously kept texting someone. The Petitioner stated that when they got home, A-E- changed her clothes, left the house, and did not tell him where she was going. The Petitioner stated that although he texted her several times during the course of the evening, she did not respond to any of his texts. He recalled that when she finally responded to him five hours later, she told him that he was a "pest" and that if he kept calling, she would deal with him when she got home. The Petitioner recalled that when he left for work that night, A-E- had not returned home.

The Petitioner recalled that he later found out that A-E- was cheating on him with a co-worker. When he confronted her about it, the Petitioner stated that A-E- denied it and said the co-worker was just a friend. He recalled that after checking her phone, he found several messages from the co-worker. The Petitioner recounted that when A-E- realized that he knew about the affair, she became emotionally and physically abusive. He recounted that when A-E- was terminated from [REDACTED] [REDACTED] he tried to console her, but that she kicked him and pushed him away and went to make a phone call. He stated she subsequently left the house and was gone for over two weeks. The Petitioner did not further describe this incident or any other specific incidents of abuse. He recounted that A-E- did not show up for their U.S. Citizenship and Immigration Services (USCIS) interview, but instead went to the local police station and took a restraining order against him. He recalled that A-E- subsequently dropped the restraining order and filed for divorce.

In his second statement, the Petitioner recounted that at the beginning of their relationship, A-E- was a wonderful woman and they had a wonderful relationship. He recalled that after their one year anniversary, A-E-'s behavior towards him changed. She began to bully and abused him. The Petitioner recounted that the abuse consisted of her refusal to drive him to his USCIS biometrics appointment, hiding his USCIS interview notice, sleeping out every night and cheating on him. He recalled feeling devastated when he discovered that A-E- cheated on him. The Petitioner recalled that when he confronted his wife about her infidelity, she became violent towards him. The Petitioner did not provide further details about this incident. The Petitioner recounted that after A-E-obtained an order of protection against him, he was forced to sleep out of the home for 15 days. The Petitioner did not describe specific acts or events in probative detail or otherwise demonstrate that he was subjected to ongoing intimidation, coercion, duress, stress, threats or acts of violence during the marriage.

In his statement, the Petitioner's friend, [REDACTED] attested that he knew the Petitioner for over the course of three years and that the Petitioner was frustrated and devastated by his divorce. [REDACTED] did not describe any behavior that would constitute abuse or extreme cruelty. In his

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affidavit, the Petitioner's friend [REDACTED] indicated that A-E- abused the Petitioner and made his whole life a living hell. He also recalled that the Petitioner was devastated when he found out that his wife had an affair. [REDACTED] did not describe any specific incidents of abuse that he witnessed.

The Petitioner also submitted records from [REDACTED] where he sought outpatient mental health services. The records from [REDACTED] confirmed that the Petitioner attended several counseling sessions. In a letter from [REDACTED] the counselor, [REDACTED] noted that the Petitioner enrolled in the counseling program to deal with his divorce. He reiterated the Petitioner's statement to him about A-E-'s changing behavior, her continuous texting, coming and going at her discretion and subsequent affair with a co-worker. [REDACTED] did not provide any additional details of any specific incident of abuse.

On appeal, the Petitioner submits a copy of the [REDACTED] notes in support of his claim of abuse. These notes do not provide any additional information about any specific incidents of abuse.

The Petitioner asserts on appeal that he has submitted sufficient evidence to establish battery and extreme cruelty; and that obtaining proof of abuse is harder for men; and that it is especially harder for him because of his low Global Assessment of Functioning (GAF) score. Supportive documents are not required, other forms of credible relevant evidence will also be considered. Here, the Petitioner has not provided sufficient probative testimony or other evidence that he was subjected to battery or extreme cruelty as the term is defined in the statute and regulation.

The Petitioner further asserts that his affidavits, statements from his friends and the notes from [REDACTED] are sufficient to demonstrate by a preponderance of the evidence that he was subjected to battery and extreme cruelty. However, the Petitioner's affidavits and the statements from his friends do not provide any substantive information relating to the Petitioner's claim battery and extreme cruelty. The Petitioner's counselor summarizes what the Petitioner relayed to him and does not add any substantive information regarding A-E-'s treatment of the Petitioner. While we do not question the counselor's professional expertise, his assessment conveys the Petitioner's statements during his interviews with him and provides no further, probative information regarding the claimed abuse. The evidence does not demonstrate that the Petitioner's spouse ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established that A-E- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### B. Qualifying Relationship and Eligibility for Immediate Relative Classification

In our *de novo* review, we find that the Petitioner has not established that he had a qualifying relationship with A-E-. The Petitioner and A-E- were divorced on [REDACTED] 2014, and the Petitioner filed the Form I-360 on March 4, 2015. A petitioner who divorces a U.S. citizen spouse within two years prior to the filing of the Form I-360 may petition under section 204(a)(1)(A)(iii)(I) of

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the Act if the petitioner establishes that the divorce was connected to battery or extreme cruelty by the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. In this case, as noted above, the preponderance of the relevant evidence does not establish that the Petitioner was battered or subjected to extreme cruelty. Therefore, the Petitioner has not demonstrated a causal connection between his divorce and battery or extreme cruelty and, accordingly, the Petitioner does not have a qualifying relationship with A-E-. Additionally, he is ineligible for corresponding immediate relative classification under section 201(b)(2)(A)(i) of the Act.

### C. 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 Form I-360 (in this case, during the period beginning in March 2012 and ending in March 2015). As proof to satisfy this requirement, the Petitioner initially did not submit any evidence. The Director issued an RFE advising the Petitioner that if the police clearances, criminal backgrounds checks, or similar reports are not available for some or all of the locations, to submit an explanation and other evidence to support his affidavit. The Director stated that other evidence of good moral character may include affidavits from responsible person who can knowledgeably attest to the Petitioner's good moral character. In response to the RFE, the Petitioner submitted letters from friends and co-workers attesting to his good moral character. The Director correctly determined that because the Petitioner had not submitted the required background checks or an explanation for why the clearances are not available, the Petitioner had not established his good-moral character.

On appeal, the Petitioner submits a record check from the [REDACTED] indicating that for the years 1996 until 2015, no criminal record was found for the Petitioner. This document reflects that the Petitioner has no criminal history in [REDACTED] Tennessee. The record reflects, however, that during the requisite time period, the Petitioner also resided in [REDACTED] Nigeria. As the Petitioner did not cover all places of the Petitioner's residence during the three-year period prior to his filing of the Form I-360, the Petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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 C-S-N-*, ID# 17856 (AAO May 9, 2016)