



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

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

MATTER OF K-V-

DATE: OCT. 7, 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 Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded that the Petitioner did not establish her 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 U.S. Citizenship and Immigration Services (USCIS) should exercise its discretion and make a favorable determination of her good moral character.

Upon *de novo* review, we will dismiss the appeal.

I. 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 101(f) of the Act, 8 U.S.C. § 1101(f) provides:

For the purposes of this Act—No person shall be regarded as, or found to be, a person of good moral character who . . . is, or was

....

- (6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

.....

The fact that any person is not within any of the following classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

In regard to determining an individual's moral character, 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 under subparagraph (A)(iii) . . . if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

The eligibility requirements for a VAWA petition are explained at 8 C.F.R. § 204.2(c)(1), which states:

- (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.

.....

- (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 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.

The evidentiary standard and guidelines for a VAWA 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:

- (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.

. . . .

- (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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). 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

A. Good Moral Character

1. The Petitioner's Multiple Identities

The record reflects the Petitioner's use of at least 4 separate identities across various requests for immigration benefits. In support of the VAWA petition, the Petitioner asserted that her true identity

(b)(6)

Matter of K-V-

is [REDACTED] and that she was born in Armenia on [REDACTED]. She claims to have had no knowledge of the filing of the applications and petitions under false identities and continues to allege, on appeal, that she feared her U.S. citizen husband, E-P-² and his family because she was subjected to battery and extreme cruelty.

a. The Petitioner's Filing of an Asylum Application as [REDACTED]

On a 2003 Form I-589, Application for Asylum and Withholding of Removal (asylum application), the Petitioner indicated that she was [REDACTED] a citizen of Russia, born on [REDACTED]. According to the record, the Petitioner (as [REDACTED] appeared at the [REDACTED] California, Asylum Office on September 3, 2003, for her asylum interview. During the interview on that application, she affirmed that her only entry into the United States occurred upon presenting a passport issued under the identity, [REDACTED]. The Asylum Office subsequently referred her asylum application to the Immigration Court. On [REDACTED] 2003, [REDACTED] did not appear for her hearing before the Immigration Court, and accordingly, the Immigration Judge ordered her removal to Russia from the United States *in absentia*.

b. The Petitioner's Attempted Admission into the United States as [REDACTED]

The Petitioner's administrative record also contains an approved Form I-730, Refugee/Asylee Relative Petition (asylee relative petition), identifying [REDACTED] as the child of [REDACTED] an asylee from Georgia. Using this identity, the Petitioner presented to immigration officials a Refugee Travel Document as a "returning asylee," upon seeking admission into the United States in December 2012. In a sworn statement, the Petitioner (as [REDACTED] stated to an Inspection Officer with the Admissibility Review Unit, in regard to her biographic information, that she was a citizen of Georgia, born on [REDACTED]. The Petitioner alleged that she obtained asylum status through her parents and "did not ever use[] a different identity to gain immigration benefits or any other type of benefits[.]" When the inspection officer presented the Petitioner with information that her fingerprints and photograph matched the identity of [REDACTED] the Petitioner denied having knowledge of the asylum application under that identity.

Using the false identity of [REDACTED] the Petitioner also admits to having obtained a driver's license and remarrying E-P- in 2012.

2. Section 101(f)(6) of the Act Precludes Approval

The Petitioner's false oral statements made under oath before the Inspection Officer in 2012 in regard to her identity and basis for admission into the United States as an asylee constitute false

¹ Although we have accepted the Petitioner's current claim regarding her identity for the purpose of adjudicating this VAWA petition, we have no conclusive evidence to establish her actual identity.

² Names withheld to protect identities of individuals.

Matter of K-V-

testimony within the meaning of section 101(f)(6) of the Act. In addition, her statements before the Asylum Officer in 2003 in regard to her identity and underlying reasons for seeking protection, constitute false testimony within the meaning of section 101(f)(6) of the Act. *See Matter of Keon Richmond*, 26 I&N Dec. 779, 789 (BIA 2016) (concluding that an individual who makes false claims to U.S. citizenship before Inspection Officers at ports of entry in order to gain admission to the United States “has done so not only to obtain the ‘benefit’ of entry but also to achieve . . . the ‘purpose’ of evading the Act’s inspection requirement.”); *see also Matter of Ngan*, 10 I&N Dec. 725, 729 (BIA 1964) (concluding that oral false statements, under oath, before an immigration officer in connection with the processing of a visa petition to accord non-quota status to an individual’s wife and children, constituted false testimony within the meaning of section 101(f)(6) of the Act). False testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. U.S.*, 485 U.S. 759, 780 (1988). The false testimony “appears to some degree whenever there is a subjective intent to deceive, no matter how immaterial the deception.” *Id.* The false testimony need not be material and does not include misrepresentations made for reasons other than obtaining immigration benefits, such as statements made out of embarrassment, fear, or a desire for privacy. *Id.*

Regarding her use of multiple identities, the Petitioner disavows knowledge of the content of the asylum application and the asylee relative petition. She asserts that she neither made false statements nor acquiesced to false statements made on her behalf with the intent to obtain an immigration benefit, but rather, she was following orders out of fear of physical harm. The Petitioner’s claims are not supported by the record.

When explaining the circumstances concerning the filing of the asylum application, the Petitioner indicated in her VAWA statement that her father-in-law and his friend “decided that [she] needed to have legal status documents[] so [she] could work or get welfare[]” and that she subsequently learned that the father-in-law’s friend filed the asylum application on her behalf under an assumed identity. In her statement submitted in response to the Director’s notice of intent to deny (NOID), the Petitioner further explained that when her father-in-law and an individual identified as E-G-A- filed for her “legal papers,” she was 18 years old and did not speak English so she “could not understand what was going on.” She also stated she “was in pain and tired from lack of sleep[]” because she just gave birth to her daughter. In a brief submitted on appeal, the Petitioner states she never received copies of the asylum application and “was led to believe that [E-G-A-] filed [an] application for family unity based on [E-P-’s] status.” She then asserts that it was not until April 2005, nearly 2 years after the asylum interview, that she even became aware that the application had been filed under the name [REDACTED]

The Petitioner’s claims that she was unaware of the contents of the 2003 asylum application, that she told the Asylum Officer that she had just given birth, and that she was not informed of the use of the name [REDACTED] until 2005, are contradicted by the record. Specifically, contemporaneous marks and notations made by the Asylum Officer indicate that the Petitioner affirmed during the asylum interview that she (as [REDACTED] had no children. Similar notations were made regarding the claimed address, date and country of birth, and the spouse of [REDACTED] all of which had no correlation to what the Petitioner claims is her actual

Matter of K-V-

biographical information as [REDACTED]. Moreover, during the asylum interview, the Petitioner signed the asylum application and other immigration documents, including a Record of Applicant's Oath during an Interview, affirming the statements made during the interview. Accordingly, the Petitioner's denial of knowledge regarding the contents and false statements made in support of the asylum application are not supported by the record.

Although the Petitioner additionally asserted she was just following orders out of fear, she has made inconsistent claims regarding such directives. In regard to the asylum interview, in her initial statement submitted with the VAWA petition, the Petitioner indicated she "said whatever [the friend] and [her] father-in-law told [her] to say." In response to the Director's NOID, however, the Petitioner stated, she "said whatever [E-P-] told her to say" at the asylum interview because she was afraid that he would subject her to physical and emotional abuse. On appeal, she states that at the asylum interview, she said "whatever [E-G-A-] and [E-P-] told her to say." Further, although the Petitioner has asserted throughout this proceeding that her father-in-law's friend, E-G-A- filed the application, in part E, the asylum application identified "A-A-" as the individual who prepared the application, and not "E-G-A-," as claimed by the Petitioner.

The Petitioner provides few details regarding the circumstances surrounding the asylee relative petition, stating that although she had been living under the name [REDACTED] since 2005, had obtained a driver's license under that name, and got remarried to E-P- under that identity, she only learned of the petition after her arrest in 2012. She also does not provide any substantive discussion about her statements before the Inspection Officer when seeking admission to the United States in December 2012 as [REDACTED].

Given the Petitioner's inconsistent claims about her knowledge of and reasons for participating in the fraud regarding her identity, the Petitioner has not established that the false statements she made before the Asylum Officer and the Inspection Officer were for any reason other than to obtain an immigration benefit. Therefore, the Petitioner is subject to the provisions of section 101(f)(6) of the Act, and is barred from establishing her good moral character.³

a. The Petitioner is Not Eligible for a Discretionary Determination of Good Moral Character

On appeal, the Petitioner asserts that despite an adverse determination of good moral character under section 101(f)(6) of the Act, she still may establish her good moral character under the threshold requirements of section 204(a)(1)(C) of the Act because she would not have provided false statements but for the abuse she had been subjected to and threats of punishment. Although we have determined that the Petitioner's inconsistent claims were not sufficient to establish that her false statements were made for any purpose other than obtaining an immigration benefit, we need not reach this issue again here. Specifically, the Petitioner does not meet the threshold requirements of

³ We note that under section 208(d)(6) of the Act, an applicant who has knowingly made a frivolous application for asylum is permanently ineligible for any benefits under the Act.

section 204(a)(1)(C) of the Act as she has not shown that false testimony is waivable. Although sections 212 and 237 of the Act provide a waiver for a finding under section 212(a)(6)(C)(i) that an individual has procured (or sought to procure) by fraud or willful misrepresentation, a visa, admission, other documentation, or other benefit under the Act, we have made no inadmissibility finding. Rather, our finding is based upon the Petitioner's false testimony for which there is no waiver.

3. The Petitioner Has Not Submitted Required Primary Evidence of Her Good Moral Character

Primary evidence of a petitioner's good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the 3 years before the VAWA petition was filed. 8 C.F.R. § 204.2(c)(2)(v). Although the Petitioner has submitted a police clearance from the state of California Department of Justice which is based upon a comparison with her fingerprints, she has not submitted the required evidence consisting of an affidavit regarding her good moral character.

4. The Petitioner Lacks Good Moral Character Under the Final Paragraph of Section 101(f) of the Act

Even if the Petitioner's false, oral statements did not fall within the enumerated provision of section 101(f)(6) of the Act, the record still demonstrates that she lacks good moral character under the final paragraph of this provision of the Act. Section 101(f) of the Act states, in pertinent part, "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes, "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."

Under the penalty of perjury, the Petitioner signed the asylum application and other immigration documents attesting to information that was not true. In addition, she admits to obtaining government benefits, including a driver's license, using false information that she provided. Although the Petitioner disclaims knowledge of and accountability for her actions, as discussed above, the record does not support her claims. Regardless, she would not be absolved of responsibility for the content of these materials that she took part in providing. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (an applicant who signed his application for adjustment of status, but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize "deliberate avoidance" as a defense to misrepresentation. *Cf. U.S. v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993) (defendant who deliberately avoids reading the form he is signing cannot avoid criminal sanctions for any false statements contained therein).

Matter of K-V-

The Petitioner's conduct falls below the standards of the average citizen in the community, and accordingly, the Petitioner has not established that she is a person of good moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

B. Additional Ground of Ineligibility

Based on the foregoing alone, the Petitioner has not established her eligibility under the Act. However, there is an additional ground demonstrating ineligibility. Specifically, our *de novo* review shows that the record contains evidence that is both insufficient and inconsistent regarding her claimed joint residences with E-P-.⁴

In her initial statement provided in support of the VAWA petition, the Petitioner generally indicated that she and E-P- lived with his family but apart from her description of abuse, she provided no specific details about where they lived or their daily routines and schedules. The Petitioner's daughter similarly indicated that she lived with her parents and extended family, but did not provide specific details about the claimed shared residence. In letters of support, the Petitioner's parents, landlords, and a neighbor referred to the Petitioner, E-P-, and their daughter having resided in an apartment located at [REDACTED] for over 2 years. However, neither the Petitioner's statements nor the statements submitted on her behalf provided any further details about the residences, shared occasions, and married life and routines, apart from the abuse.

In addition to these deficiencies in the evidence, the record contains inconsistent information concerning the Petitioner's shared residences with E-P-. In the brief submitted on appeal, the Petitioner indicates that she physically resided with E-P- and his family since her arrival in the United States in May 2002 until around May 2009, at [REDACTED] in [REDACTED] California, and their mailing address was at [REDACTED] in [REDACTED] California. However, the License and Certificate of Confidential Marriage the Petitioner submitted to establish her first marriage to E-P- in [REDACTED] 2002, indicated that their physical address was the [REDACTED] address. And, the section inquiring about "mailing address – if different," was blank and did not indicate any address.

Moreover, publically available information indicates that around May 2004, the [REDACTED] address was sold to E-P- by another couple, neither of whom appears to have the family relationship identified by the Petitioner in her VAWA statement as members of their household. The fact that E-P- did not own the [REDACTED] address until May 2004 conflicts with the Petitioner's claim to have resided there with him and his family members since her arrival in May 2002.

Even without the inconsistencies, the record is insufficient to establish the Petitioner's joint residence with E-P-. Her statements and those submitted on her behalf do not provide a probative account of their

⁴ We may deny a petition that does not comply with the technical requirements of the law 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).

Matter of K-V-

shared residences and experiences, apart from the abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In these proceedings, the Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met this burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K-V-*, ID# 114109 (AAO Oct. 7, 2016)