



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

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

MATTER OF J-O-M-

DATE: OCT. 24, 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 Petitioner is a citizen of Mexico, who claims to have entered the United States on April 1, 2004, without inspection, admission, or parole. The Petitioner wed S-B-¹ a U.S. citizen, and subsequently filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (VAWA petition). The Director, Vermont Service Center, denied the VAWA petition concluding that the Petitioner did not establish that he entered into his marriage with S-B- in good faith, resided with S-B-, and met the requirement for the *bona fide* marriage exemption from the bar to approval at section 204(g) of the Act because he married S-B- while he was in removal proceedings. The Director also found that the Petitioner did not establish a qualifying relationship with S-B- and his eligibility for immediate relative classification based on that relationship.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he established, through documentary evidence, that he is eligible for the benefit sought.

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 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

¹ Initials are used in this decision in order to protect individuals' identities. We note that the Petitioner's spouse used several surnames during her marriage to the Petitioner; we use the initial of the surname indicated by the Petitioner on the VAWA petition.

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 are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) 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.

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(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.

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

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, school

records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

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(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.

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(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.

In a situation where a petitioner marries while in removal proceedings, section 204(g) of the Act applies and prescribes:

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.

Unless a petitioner remained outside of the United States for two years after the marriage, a VAWA petition, filed under section 204(a)(1)(A)(iii) of the Act cannot be approved pursuant to section 204(g) of the Act unless the petitioner establishes the *bona fides* of the marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Section 245(e) of the Act, 8 U.S.C. § 1255(e)(3), states, in pertinent part:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

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. Entry into the Marriage in Good Faith

The Director correctly determined that the Petitioner did not establish that he entered into his marriage to S-B- in good faith. The Petitioner submitted the following evidence with the VAWA petition to establish good faith marriage: a personal statement, a marriage certificate; greeting cards; photographs; statements from family members, friends, and acquaintances; several bills, bank

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statements, and a document relating to employment-related benefits. In response to a request for evidence (RFE) issued by the Director, the Petitioner submitted statements from his employers, information regarding a bond paid to secure the Petitioner's release from detention by U.S. Immigration and Customs Enforcement (ICE), the itinerary for a trip to [REDACTED] a psychological evaluation, a bank statement, and a statement regarding employment-related benefits. On appeal, the Petitioner submits another personal statement, health insurance cards, a letter from a marriage counselor, additional documents regarding the ICE bond, additional photographs, and a letter from S-B-. We have reviewed all of the evidence in the record of proceedings.

In his initial personal statement, the Petitioner recalls that he met S-B- in July 2009 when she was a customer at a Mexican restaurant/grocery store where he worked, she asked for his phone number, they started dating, and he moved in with her after one month of dating. The Petitioner reports that he moved in with S-B- because he was planning to move from where he was living and she needed help paying her mortgage. They lived together for three years before they married on [REDACTED] 2012. The Petitioner states that they went to [REDACTED] for their honeymoon. The remainder of his initial personal statement relates to abuse during their marriage.

In the Petitioner's second personal statement, which he submits on appeal, the Petitioner provides additional details regarding his relationship with S-B-. He recounts that, prior to their marriage, he and S-B- would watch television, go out to eat and to play pool, shop for food, go for walks and to play tennis, to see movies and local attractions, and on longer trips to parks and the ocean. He also provides some additional information regarding their household schedule, including their household schedules when they both worked and when they had days off from work. The Petitioner states that, prior to their actual marriage, he and S-B- lived together as a married couple and held themselves out as married, including referring to each other as spouses. The Petitioner explains that they wanted to get married before he had any immigration problems but he refused to do so because he did not want S-B- to think he was with her for that reason, and he wanted to marry S-B- after he could "normalize" his immigration status.

The Petitioner's brother, J-G-M-, and his brother's spouse, J-G-, wrote statements in support of the Petitioner's VAWA petition. In his statement, J-G-M- only discusses abuse that occurred during the Petitioner's relationship with S-B-. In her letter, J-G- indicates that the Petitioner and S-B- were happy in the beginning of their marriage and that the Petitioner loved S-B- and tried to work on their marriage, but she does not describe how his feelings for S-B- were manifested.

Statements from J-P-, R-T-, D-S-, G-G-, and A-D- confirm that the Petitioner and S-B- married but do not provide probative information regarding the Petitioner's intentions at the time that he entered into his marriage with S-B-. In response to the RFE, the Petitioner submits an additional statement from D-S- and a statement from D-S-'s father. Both D-S- and his father are owners of a restaurant where the Petitioner has worked since 2010. In their statements, they report that the Petitioner and S-B- met in 2009, the Petitioner spoke with them about his relationship with S-B-, they know that the Petitioner and S-B- took vacations together, they helped S-B- with the process of posting the bond for the Petitioner to be released from ICE detention, and they attended the couple's wedding and joined them for lunch after the ceremony. D-S- and his father do not, however, provide

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sufficient detailed information regarding the couple's courtship, shared residence, and experiences to establish the Petitioner's intentions when he entered into his marriage with S-B-.

The marriage certificate reflects that the Petitioner and S-B- entered into a legal marriage, but it is not sufficient to establish that the Petitioner entered into the marriage in good faith. The photographs of the couple reflect that the Petitioner and S-B- were photographed together on several occasions; however, they are also insufficient to establish the Petitioner's good-faith marital intentions, particularly in the absence of a probative account from the Petitioner of his relationship with S-B-. Similarly, the greeting cards from the Petitioner and S-B- indicate that they were in a relationship but do not describe that relationship in any detail.

The remaining documentary evidence, including the bills, bank statements, documents regarding employment-related benefits, information regarding the ICE bond, and the itinerary for the trip to [REDACTED] also are not sufficient to establish that the Petitioner entered into his marriage with S-B- in good faith. The bills are only in S-B-'s name and are for a very limited period of time during their marriage. The bank statements reflect that S-B- and the Petitioner maintained separate accounts and refer to a very limited period of time, reflect low balances, and no purchases related to marital expenses. The insurance benefit form indicates that a health insurance policy is in S-B-'s name, lists the Petitioner as her dependent, and identifies his relationship to her as "spouse," but the form also reflects that a spousal surcharge is not included, the Petitioner is not designated as a beneficiary on the available life insurance coverage, and the form does not indicate whether any premiums were paid or if the policy ever went into effect.

The documents relating to the ICE bond confirm that S-B- paid the bond but this occurred prior to their marriage and also is not indicative of the Petitioner's intentions when he entered into his marriage with S-B-. The letter from the marriage counselor indicates that the Petitioner and S-B- attended marital counseling three times in June 2013 but does not provide sufficient information regarding the Petitioner's good-faith marital intentions; this letter is also contradicted by the Petitioner's initial personal statement, in which he indicates that he and S-B- attended marital counseling once, which reduces the weight we accord to both this letter and the Petitioner's initial personal statement.

In her letter, which is dated March 9, 2016, S-B- writes that she met the Petitioner in August 2009 and he moved in with her two weeks later, although his personal statements indicate that they met in July 2009 and he moved in one month later. S-B- does not describe their relationship, either prior to or during their marriage. She relates that she and the Petitioner talked about getting married at least six times during the first couple years they were together and she finally accepted, which is at odds with the Petitioner's account in his second personal statement that he did not wish to marry S-B- until he could gain immigration status. Finally, she writes that "things did not work out as I had planned and so we divorced." Given the lack of information in S-B-'s letter regarding the Petitioner's intentions in entering into his marriage with her and the inconsistencies between her letter and the Petitioner's personal statements, the letter from S-B- is not sufficient to establish that the Petitioner entered into his marriage to S-B- in good faith.

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The itinerary for the trip to [REDACTED] is not sufficient to establish the Petitioner's good-faith marital intentions because, while the Petitioner indicates in his initial personal statement that he and S-B- went for "a week" to [REDACTED] for a honeymoon following their wedding on [REDACTED] 2012, the itinerary is inconsistent with that information because it reflects a departure date of August 8, 2011, and a return date of August 11, 2011, and then separately indicates a departure date of August 8, 2015. The psychological evaluation relates primarily to events during the Petitioner's childhood and young adulthood and the abuse by S-B-, does not discuss the Petitioner's motivation to marry S-B-, and provides little information regarding their meeting, courtship, wedding, or shared residences and, accordingly, is not sufficient evidence of the Petitioner's entry into his marriage with S-B- in good faith.

Accordingly, the preponderance of the relevant evidence does not establish that the Petitioner entered into his marriage with S-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Joint Residence

The Director correctly determined that the Petitioner did not establish that he resided with S-B-. The VAWA petition indicates that the Petitioner resided with S-B- from September 2009, prior to their wedding on [REDACTED] 2012, until September 2013. The relevant evidence in the record of proceedings includes the evidence listed above with respect to whether the Petitioner entered into his marriage with S-B- in good faith. As noted above, in his second personal statement, the Petitioner provides some additional information regarding their residential routines, but he does not describe his residence with S-B-, their shared belongings, marital routines in their residence, or provide any other substantive information sufficient to demonstrate that he resided with S-B- after their marriage.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits of persons with personal knowledge of the relationship or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). None of the persons who wrote statements in support of the VAWA petition indicate that they ever visited the Petitioner and S-B- at the couple's residence, and, accordingly, their statements do not provide any probative details of their interactions with the couple at their residence or describe their residence in any detail. The bills and bank statements reflect that the Petitioner and S-B- received mail at the same address but this does not establish a joint residence. Similarly, the insurance benefit form, insurance cards, ICE bond documents, greeting cards, psychological evaluation, and itinerary for the trip to [REDACTED] do not provide any information relevant to whether the couple jointly resided.

Accordingly, the Petitioner has not established by a preponderance of the evidence that he resided with S-B- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Section 204(g) of the Act and Eligibility for Immigrant Classification

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Because the Petitioner married S-B- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *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”).

Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the Petitioner to establish his good-faith entry into the qualifying relationship by a preponderance of the evidence, and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. at 369. However, to be eligible for the *bona fide* marriage exemption under section 245(e)(3) of the Act, the Petitioner must establish his good faith entry into the marriage to S-B- by clear and convincing evidence. Section 245(e)(3) of the Act; 8 C.F.R. § 245.1(c)(8)(v). “Clear and convincing evidence” is a more stringent standard than preponderance of the evidence. *Arthur*, 20 I&N Dec. at 478.

As we have already determined, the Petitioner has not established his good-faith entry into his marriage to S-B- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act. He therefore has not demonstrated the *bona fides* of his marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this VAWA petition.

D. Eligibility for Immediate Relative Classification

We also find that, because the Petitioner is not exempt from section 204 (g) of the Act, he has also not demonstrated his eligibility for immediate relative classification, as required by section 204 (a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

E. Good Moral Character under the “Catch All” Provision of Section 101(f) of the Act

Beyond the decision of the Director, we also determine that the Petitioner has not demonstrated his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The record of proceedings reflects that the Petitioner was arrested on [REDACTED] 2005, for the following criminal offenses:

- 1) Theft of Services under section 165.15 of the New York Penal Law; and
- 2) Criminal Trespass under section 140.10 of the New York Penal Law.

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The record of proceedings also reflects that the Petitioner pled guilty to the following criminal offenses:

- 1) Disorderly conduct under section 5503(a)(4), title 18 of the Pennsylvania Consolidated Statutes on [REDACTED] 2011; and
- 2) Disorderly conduct under section 5503(a)(4), title 18 of the Pennsylvania Consolidated Statutes on [REDACTED] 2012.

The record of proceedings does not reflect the disposition of these arrest and convictions, which is the Petitioner's burden to supply, and the Petitioner does not address these acts or his moral character, generally, in his personal statements. See 8 C.F.R. § 204.2(c)(2)(v) (“[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit . . . accompanied by a local police clearance or a state-issued criminal background check . . .”).

Section 101(f) of the Act states, in pertinent part, that “[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 Petitioner's acts in violating 18 Pa. Cons. Stat. § 5503(a)(4) and N.Y. Penal Law §§ 165.15 and 140.10 fall under this catch-all provision of section 101(f) of the Act. As noted above, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes that “[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 Petitioner's convictions for disorderly conduct under 18 Pa. Cons. Stat. § 5503(a)(4) and his arrests for theft of services and criminal trespass under N.Y. Penal Law §§ 165.15 and 140.10, respectively, demonstrate conduct that falls below the standards of the average citizen in the community and adversely reflect on his 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). Accordingly, the Petitioner has not demonstrated his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

III. 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 J-O-M-*, ID# 9792 (AAO Oct. 24, 2016)