U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17167684

Date: APR. 21, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that he resided with his U.S. citizen spouse and show by clear and convincing evidence that he entered into the marriage in good faith. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A VAWA petitioner who is the spouse or ex-spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

The Act bars approval of a VAWA petition if the petitioner entered into the marriage giving rise to the petition while in removal proceedings, unless the petitioner establishes by clear and convincing evidence that the marriage was entered into in good faith and not solely for immigration purposes. *See* sections 204(g) and 245(e)(3) of the Act, 8 U.S.C. §§ 1154(g) and 1255(e)(3) (outlining the restriction on, and exception to, marriages entered into while in removal proceedings); *see also* 8 C.F.R. § 204.2(c)(1)(iv) (providing that a self-petitioner "is required to comply with the provisions of . . . section 204(g) of the Act"). Clear and convincing evidence is that which, while not "not necessarily conclusive, . . . will produce in the mind . . . a firm belief or conviction, or . . . that degree of proof which is more than a preponderance but less than beyond a reasonable doubt." *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although a petitioner may submit any credible evidence for us to consider, we determine, in our sole discretion, the credibility of and the weight to give that evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). The AAO reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner, a native and citizen of Moldova, was placed into removal proceedings in [redacted] 2014 and married his U.S. citizen spouse, L-G-[1], in [redacted] 2016, while in removal proceedings. The Petitioner subsequently filed his VAWA petition in January 2019. The Director determined the Petitioner had not met his burden of establishing by clear and convincing evidence that he entered into marriage with L-G- in good faith, as required by section 204(g) of the Act, since the Petitioner had married his spouse while in removal proceedings. Additionally, the Director concluded that the Petitioner had not met his burden of showing by a preponderance of the evidence that he resided jointly with L-G-, as section 204(a)(1)(A)(iii)(II) of the Act requires.

In the present case, the Director determined that the Petitioner's personal statement is vague and lacks details regarding his courtship, intent, or married life with L-G- that would establish that he entered into the marriage in good faith. The Director noted that the Petitioner submitted bank statements showing that the Petitioner and L-G- held a joint account, but the statements showed minimal account activity and did not reflect transactions that would typically be associated with a shared household account. Further, the Director indicated that the Petitioner provided some pages of a lease agreement, utility bills, and photographs,[2] but determined that that evidence was insufficient to establish the Petitioner's good faith marriage in the absence of probative, detailed testimony. With regard to a psychological evaluation the Petitioner submitted in response to a request for evidence (RFE), the Director indicated that because the evaluator was not a witness to the relationship, the report did not sufficiently establish the Petitioner's intent in marrying L-G-.

On appeal, the Petitioner does not submit any new evidence and requests that we adjudicate his appeal "based on the evidence in the record." In his brief, he argues that he submitted "a sufficiently detailed statement and analysis by a competent mental health professional indicating that his subjective state of mind was such that he intended to form a household with his U.S. citizen wife." He notes that he worked as a truck driver and was often away from home, which left him less time with his spouse and family, but that "he did his best to provide for his wife." He contends that the Director "did not accept the lease, bank statements, and joint bills" and therefore held the Petitioner to a standard higher than that contemplated by the VAWA provisions. He alleges that the Director "is requiring a level of proof akin to that required to convict someone of a criminal offense" and "does not appear to have considered the practical impact of the nature of earning ones living as a truck driver would have on [his] ability to access documentation that would likely be under the control of his wife . . . ."

[1] We use initials to protect identities.

[2] Although the record contains utility bills and photographs that were previously provided in relation to another application involving the Petitioner, the record does not reflect that the Petitioner submitted them in support of his VAWA petition or requested that we consider such evidence.

Upon *de novo* review, we will dismiss the appeal, and we adopt and affirm the Director's decision insofar as the Director determined the Petitioner has not established by clear and convincing evidence that he married L-G- in good faith. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision."). The Petitioner's arguments on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to meet his burden of establishing by clear and convincing evidence that he married L-G- in good faith.

The Petitioner's personal statements address his courtship and marriage with L-G- in a brief and general manner. In his initial statement, he indicates that he met L-G- at a coffee shop in [redacted] California in October 2015 and got her phone number after a conversation. He states that he and L-G- "started to communicate a lot by phone" and then started dating. He claims that he was living in [redacted] Illinois at the time and visited L-G- in [redacted] every week or two, and then they "felt pretty good together" so they "decided to move together." Accordingly, he states he left [redacted] and moved in with L-G- and her daughter in [redacted] in May 2016. He notes that he was working as a truck driver, so he could not be home every day but organized his schedule so that he could "be home at least once a week." He contends that "[e]ver[y]thing was pretty good," so he "asked [L-G-] to marry [him] and she said Yes." They married in [redacted] 2016, and "[a]fter some time . . . [L-G-] changed." He describes L-G-'s lack of communication with him, drug use, improper care of her daughter, and verbal abuse. The Petitioner indicates that he contemplated suicide because L-G- threatened to send him back to Moldova or cause problems for him "with her friends," which made him feel "sick" and "nervous." He states that in [redacted] 2018, he arrived home to find another man at the house and learned that L-G- was expecting that man's child. The Petitioner claims that L-G- and the man told him that he and L-G- were no longer together, that he had no right to talk with her anymore, and that the man would kill the Petitioner if he tried to contact L-G-. In a supplemental statement submitted in response to the Director's RFE, the Petitioner states that he "will establish that [his] marriage was entered into in good faith and not for the purpose of evading U.S. immigration laws."

The supporting documentation the Petitioner submitted is also insufficient to meet his burden. In a supporting letter, the Petitioner's coworker states that the Petitioner "changed in to a nervous and depressed person" in [redacted] 2018, but does not indicate any knowledge of the Petitioner's marriage to L-G-. In a psychological evaluation dated November 2018, a licensed clinical psychotherapist indicates that the Petitioner reported that he "felt in love at first sight" when he met L-G- at a coffee shop and that "[a]fter they met they started to communicate daily talking for hours on the phone." Further, the psychotherapist reports that, per the Petitioner's report, "[a]fter they dated for some time [the Petitioner] moved in with [L-G-] and her daughter in May 2016. Soon after that he proposed and on [redacted] 2016 they got married. Immediately after they got married his wife started to constantly subject [the Petitioner] to . . . abuse." The psychotherapist provided detailed information relating to the Petitioner's report of abuse by L-G- and the effects on his physical and mental health, but did not provide additional details about the couple's courtship, intentions to marry, wedding ceremony, or life together as spouses. The lease the Petitioner submits is only a partial copy of a longer document and reflects that the Petitioner and L-G- signed a month-to-month rental agreement beginning on May 1,

2016. It does not contain the name or signature of the landlord and does not indicate that they intended to live together beyond the single month indicated on the lease. The bank statements show that the Petitioner and L-G- shared a bank account, but are insufficient in the absence of other probative evidence to establish the Petitioner's good faith marriage. As stated, the Petitioner must establish by clear and convincing evidence that he entered into marriage with L-G- in good faith, as he entered into marriage while in immigration removal proceedings. Although we acknowledge his argument that his profession kept him away from home and made it difficult to retain documentary evidence relating to his marriage, he also did not provide detailed, specific information in his personal statements. Overall, due to the lack of probative evidence, the Petitioner has not demonstrated the record is sufficient to establish he met this burden, and he has not shown that he is eligible for immigrant classification as an abused spouse of a U.S. citizen under VAWA.

Since the identified basis for denial is dispositive of this matter, we decline to reach and hereby reserve the Petitioner's arguments regarding whether he established by a preponderance of the evidence that he resided jointly with his spouse. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.