U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18094224

Date: JUN. 10, 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 approved the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), but subsequently revoked the petition after issuing a notice of intent to revoke (NOIR). The matter is before us on appeal. We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that she was in a qualifying relationship as the spouse of a U.S. citizen, is eligible for immigrant classification based on this qualifying relationship, entered into the marriage with the U.S. citizen spouse in good faith and was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(i)-(iii) of the Act. The petition cannot be approved if the petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. 8 C.F.R. § 204.2(c)(1)(ix); see also 3 USCIS Policy Manual D.2(C), https://www.uscis.gov/policy-manual (explaining, in policy guidance, that the self-petitioning spouse must show that at the time of the marriage, they intended to establish a life together with the U.S. citizen spouse).

Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(i), (vii).

U.S. Citizenship and Immigration Services (USCIS) may revoke an approved U petition following a notice of the intent to revoke and where, most relevantly, "[a]pproval of the petition was in error." 8 C.F.R. § 214.14(h)(2). 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 we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

A. Background and Procedural History

The Petitioner is a native and citizen of Kenya who first entered the United States on a student visa in 2001. In [redacted] 2007, the Petitioner married J-L-,[1] a native-born U.S. citizen. In January 2008, J-L- filed Form I-130, Petition for Alien Relative, on Petitioner's behalf. The Petitioner simultaneously filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). In December 2008, the Petitioner and J-L- were interviewed together. While a decision was pending on the two benefit requests, the Petitioner filed a VAWA petition in August 2013. In adjudicating the VAWA petition, the Director issued a request for evidence (RFE), identifying a number of issues and inconsistencies in the record and raised during the couple's December 2008 interview. For example, the RFE explained that the record evidenced that the Petitioner and J-L- were not living together in early 2007, contrary to the Petitioner's assertions in her statement. The RFE also highlighted the absence of photographs or details in the record of the couple's marriage or life together, specifically noting that the Petitioner's family were not present at her wedding. In response to the RFE, the Petitioner submitted a brief by counsel stating, in relevant part, that the Petitioner admitted at the December 2008 interview, after being shown evidence of address discrepancies, to separating from her husband for some months in the beginning of the marriage. Counsel's brief also claimed that the couple had many photographs of their time together but they were within J-L-'s possession and the timing of the wedding did not allow for her family to attend. Counsel's statements were not supported by evidence or statements in the record.[2] Among the documents submitted with the RFE was a receipt for an engagement ring, furniture receipts in both the parties' names, joint membership cards, additional affidavits by friends attesting to the happiness of the couple, and billing and tax statements.[3] The VAWA petition was approved in September 2014.

In October 2014, the Petitioner filed another adjustment application and was interviewed in April 2017. In March 2020, the Director issued a NOIR the Petitioner's VAWA petition. The NOIR explained that during the Petitioner's 2017 adjustment of status interview she stated under oath that she had no children anywhere in the world, that she resided with J-L- from 2007 to 2010, and that J-L- did not travel outside of the United States during their relationship. The NOIR then stated that USCIS investigations determined the Petitioner's statements made under oath were false. According to the NOIR, immigration officers contacted the Massachusetts Department of Vital Records and learned that the Petitioner had two children with another man, J-K-, born [redacted] 2007, and [redacted] 2009. The NOIR also stated that [redacted] City Hall records reflected that the Petitioner and J-K- claimed to be married to each other when each of their children were born. The NOIR stated that

[1] Initials are used to protect the identities of the individuals.

[2] Assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

[3] On appeal, the Petitioner asserts that she is not aware of how the agency obtained a copy of her engagement ring receipt.

USCIS confirmed that J-L- traveled to China in May 2007, shortly after their marriage and when the Petitioner stated she had moved to a new apartment with J-L-. According to the NOIR, USCIS also obtained evidence that J-L- had a child on [redacted] 2009, with an individual other than the Petitioner. The NOIR also noted that after further review of the evidence submitted in support of the VAWA petition, additional inconsistencies were found in the record. The NOIR highlighted that the receipt submitted for the engagement ring, while listing her husband, J-L-, as the payee, indicated J-K-, the father of her children, as the customer. The NOIR also stated that the lease listing the Petitioner and J-L- as lessees of an apartment from April 2008 to March 2009 was not authentic.

The Petitioner responded to the NOIR and submitted an affidavit stating she began living with J-L- and her sister in April 2007. The Petitioner stated they all signed a lease in April 2008. She said that "during [their] relationship," J-L- became distant and would spend weeks away from home but would eventually return. The Petitioner did not previously disclose this information in other statements and does not specify when in their relationship her husband started leaving for weeks at a time. The Petitioner explained that she had "no knowledge of any child that [J-L-] may have fathered" but made no reference to the children born on [redacted] 2007 and [redacted] 2009 with birth records listing her and J-K- as the parents. The Petitioner's counsel submitted a brief in response to the NOIR, raising arguments which are repeated on appeal. The Director revoked the VAWA petition in February 2021. The revocation explained that the credibility of the evidence the Petitioner provided was brought into question and the submitted evidence did not overcome the discrepancies raised in the record. As a result, the Director found that the Petitioner did not establish that she entered into the marriage with J-L- in good faith, that she resided with her spouse during the qualifying relationship, that she was subjected to battery or extreme cruelty and that she is a person of good moral character. Based on our de novo review, the Petitioner has not established she entered into a qualifying relationship in good faith and, accordingly, the Director's revocation of her VAWA petition was proper. As this issue is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's other appellate arguments. 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).

B. The Petitioner Has Not Established Entering into the Marriage in Good Faith

We limit our analysis of the facts to whether the Petitioner has established, by a preponderance of the evidence, that she entered into her marriage with J-L- in good faith. On appeal, the Petitioner asserts that the evidence in the record was enough for the Director to approve her VAWA petition previously and the discrepancies highlighted are minor compared to the volume of evidence provided. While the evidence submitted in response to the RFE initially led the Director to weigh the overall evidence in the Petitioner's favor, the additional unresolved material inconsistencies raised in the revocation of the VAWA petition led the Director to reevaluate the reliability and sufficiency of the evidence submitted in support of the requested immigration benefit. As discussed above, although we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act;

8 C.F.R. § 204.2(c)(2)(i).[4] Based on our de novo review, a majority of the evidence raised inconsistencies or did not support good faith marriage.

In support of her VAWA petition, the Petitioner submitted an affidavit dated July 2013 which states she met J-L- in August 2006, he proposed in November 2006, and they were married in [redacted] 2007. She stated that there were only two of J-L-'s friends at the wedding. She said her parents were unhappy with her timing but she did not explain why there was an urgency to marrying without her family present. She stated her spouse moved into her apartment after the wedding, but later recants this statement in her declaration submitted in response to the NOIR. The Petitioner's father's two-page affidavit described twice how the Petitioner was holding off on marriage and that they were happy when she decided to marry. He also recalled visiting the couple several times at "their place" but does not state when or where he visited them. Her sister described in an affidavit dated August 2013 how thrilled the family was that the Petitioner committed to "any guy" and described meeting J-L- during the Christmas holiday in 2006. Another sister also submitted an affidavit dated August 2013, stating she was there when the Petitioner and J-L- met and that they all lived together. She does not state where and when they lived together.[5] Neither sister explained why they did not attend the Petitioner's wedding. The Petitioner also submitted affidavits by two friends. One friend stated they saw the couple once or twice in between 2007 and 2008 and the other made general statements such as, "they seemed very happy." Beyond these general statements, the affidavits from friends and family did not provide additional, probative detail on the Petitioner's courtship or marriage.

As evidence of a shared life together, the Petitioner submitted tax records for years 2008 and 2010-2012, all of which were designated "married filing separately." The taxes did not evidence the comingling of the couple's finances or their joint residency. Moreover, the Petitioner explained in the record that she stopped living with the Petitioner in 2010. The Petitioner provided a December 2008 bank account statement in her name, which did not identify the handful of transactions listed and did not provide meaningful insight as to how the couple shared their expenses. Bills submitted by the Petitioner were either under her name or her husband's but not both. Also submitted was J-L-'s life insurance policy application from December 2008 listing the beneficiary as the Petitioner, but no evidence of payments made to the policy were included in the record. The Petitioner submitted a lease naming her, J-L-, and her sister as lessees for the term April 2008 to March 2009, which USCIS investigations determined was not authentic.[6]

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[4] The Director found substantial and material discrepancies in the record, the nature of which may trigger inadmissibility grounds, such as willful misrepresentation of material fact. See section 212(a)(6)(C)(i) of the Act (stating any noncitizen who by fraud or willful misrepresentation procures or seeks to procure a benefit under the Act is inadmissible). While the Petitioner is not required to demonstrate her admissibility in this context, we consider these material inconsistencies in determining the weight given to the evidence in the record.

[5] In response to the NOIR, this sister submitted another declaration, which was undated. The declaration stated she moved in with the Petitioner and J-L- in March 2007 and they all signed a lease. The Petitioner did not provide a copy of the lease from April 2007 to April 2008, nor does she state whose name was on the lease for that time period.

[6] On appeal, the Petitioner's counsel admits that the lessor identified on the lease sold the property in 2007, prior to the Petitioner and J-L-'s signing and prior to the validity period of the lease. However, counsel asserts that the lessor's company continued to manage the property. Counsel further states that the property was once again sold and if USCIS contacted the current property managers, they would have zero authority to determine the authenticity of a lease from 2008. Counsel provides no supporting documentation or affidavits to substantiate his assertions, which do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. at 534 n.2.

In response to the RFE, the Petitioner included additional affidavits by friends and family which attested to the happiness of the Petitioner and J-L-, but again did not provide substantial details on their courtship, marriage, shared experiences, marital routines, or life together. A majority of the remaining submissions raised additional inconsistencies, some not identified in the revocation. For example, the mobile bill account statements in both of the couple's names was associated with a social security number that did not belong to either the Petitioner or her husband. The Petitioner submitted statements from a joint checking account in both her and J-L-'s names for some months in 2007, 2008, and 2009. The transactions evidenced that only the Petitioner deposited her paychecks into the account. The records otherwise reflect unidentified deposits and deposits associated with partially obscured names. One transaction had J-K-'s first name with the last name covered up, another transaction clearly identified J-K- as depositing funds, while another transaction was altered to conceal the last name and some of the first name, making it appear to read as J-L-'s first name. In addition, as discussed in the NOIR and revocation, the receipt for the Petitioner's engagement ring listed J-K-, the father of her children, as the customer, not the Petitioner's husband.

We are concerned by these inconsistencies, the altered documents, and that the Petitioner only admitted that she and her husband did not live together in the months after their wedding when confronted by a USCIS officer with evidence of address discrepancies. For this reason, we give limited evidentiary weight to the Petitioner's assertions, raised for the first time in response to the NOIR, that her husband traveled outside the home for weeks at a time. She made these statements after USCIS confirmed her husband's travel to China in May 2017[7] and to support her assertion that she was unaware of her husband having a child with another woman. Most importantly, USCIS investigations revealed that the Petitioner had two children, fathered by J-K- during the early part of Petitioner's marriage to J-L-. According to the NOIR, her first child was born on [redacted] 2007, which would indicate that the Petitioner was either pregnant at or became pregnant shortly after her [redacted] 2007 marriage to J-L-. The NOIR also indicates that she was pregnant with her second child, fathered by J-K- and born on [redacted] 2009, during her December 2008 interview with USCIS, where her burden was to establish the validity of her marriage in order to have her family-based petition and adjustment of status request processed. The Petitioner bears the burden of establishing eligibility,

[7] On appeal, the Petitioner asserts that USCIS did not provide proof that it was indeed her husband that traveled to China as J-L- is a common name. USCIS must provide the Petitioner with an opportunity to respond to or rebut derogatory information of which she is unaware before a decision is issued. See 8 C.F.R. § 103.2(b)(16)(i) (stating that, if a decision will be adverse to the petitioner and based on derogatory information of which she is unaware, USCIS is required to advise her of the derogatory information and provide her with an opportunity to rebut the information before a decision is rendered). USCIS is not, however, required to provide a petitioner with an exhaustive list or documentation of the derogatory information as long as it advises her of that information and provides her with an opportunity to respond. See, e.g., Ogbolumani v. Napolitano, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide, in painstaking detail," the derogatory evidence it finds and that a NOID provided sufficient notice and opportunity to respond to the derogatory information); Hassan v. Chertoff, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) requires only that the government make a petitioner "aware" of the derogatory information used against her and provide her with the opportunity to explain—"[t]he regulation . . . requires no more of the government"); Owusu-Boakye v. Barr, 2020 WL 6707333, at *4 (4th Cir. Nov. 16, 2020) (stating that 8 C.F.R. § 103.2(b)(16)(i) requires only that the agency disclose to the petitioner derogatory information that might be used to deny her application, "an obligation the agency satisfied when it summarized in its notices" the derogatory information and its findings that the derogatory information impacted eligibility for the benefit sought). Here, the record establishes the Director provided written notice of her husband's travel and gave her an opportunity to explain. We do not interpret the regulations to require the Director to have provided additional information to the Petitioner prior to issuing the revocation of the VAWA petition.

including that she married J-L- in good faith. Section 204(a)(1)(A) of the Act; 8 C.F.R. § 204.2(c); Matter of Chawathe, 25 I&N Dec. at 375. Viewing the record as a whole, the Petitioner's submissions do not overcome the serious inconsistencies raised both by the Director and on appeal, and she has not submitted sufficient evidence to establish, by a preponderance of the evidence, that she entered into her marriage with J-L- in good faith.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that she entered into her marriage to J-L-, her U.S. citizen spouse, in good faith. Consequently, she has not demonstrated that she is eligible for immigrant classification under VAWA and that the Director erred in revoking the VAWA petition.

ORDER: The appeal is dismissed.