U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17098782

Date: MAR. 08, 2022

Motion on Administrative Appeals Office 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 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), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen and reconsider. We will dismiss the motions.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also 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. 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). While we must consider any credible evidence relevant to the VAWA self-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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or US Citizenship and Immigrations (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

II. ANALYSIS

The Petitioner is a native and citizen of Russia who entered the United States in September 2015 as a B2 visitor, married a U.S. citizen, K-B-,[1] on [redacted] 2016, and filed her VAWA petition in August

[1] We use initials to protect individual identities.

2016. In denying the VAWA petition the Director found that the Petitioner did not establish that she resided with her U.S. citizen spouse or that she entered into the marriage in good faith.

In dismissing the appeal, we determined that the Petitioner did not establish by a preponderance of evidence that she married in good faith as her affidavit and those from her parents and friends lacked probative detail regarding her experiences with K-B- prior to their marriage and their intentions in marrying. We noted that there were discrepancies concerning the dates the couple remained together, specifically that a court petition to terminate the marriage filed by K-B- in [redacted] 2016 indicates that they separated on [redacted] 2016, less than one month after marriage, but that the Petitioner reported in an August 2016 psychiatric evaluation that they lived together until the end of [redacted] 2016, and in her personal declaration she stated that she moved in with her parents at the beginning of [redacted] 2016. We determined that the evidence in the record raised questions about the legitimacy of the marriage. Though we acknowledged the Petitioner's explanation for scant documentary evidence we concluded that it offered little insight into the Petitioner's intentions in marrying K-B-. Because the determination that the Petitioner did not establish that she entered her marriage in good faith was dispositive, we did not reach whether she shared residence with K-B-.

On motion the Petitioner through counsel asserts that we erred finding that she did not establish by a preponderance of evidence that she married K-B- in good faith and contends that new evidence is submitted on motion. The Petitioner argues that our decision goes against Congressional intent to exercise sensitivity to battered immigrant women and she cites statutes, legal decisions, and memorandums that she must show at the time of marriage she intended to establish a life with her spouse, and that we must accept any credible evidence, consider evidence individually and in totality, and consider the difficulties that battered spouses have in obtaining documentation, and she argues that we gave equal weight to quality and quantity of evidence rather than more weight to quality.[2]

The Petitioner asserts that had we applied the standard of probably true, the affidavits would have been found sufficient in proving her intentions in marrying K-B- and that we picked apart each piece of evidence instead of looking at the totality of circumstances. She claims that she provided details of their courtship, wedding, and marriage, and recounts her affidavit describing K-B-, that her mother was convinced he wanted to be with her, and that friends' affidavits corroborated her feelings. The Petitioner calls it proof of her intentions that she was willing to start a life with K-B- after the emotional hurt of her prior failed marriage because she believed they held common values.

The Petitioner maintains that K-B- rushed into the marriage and quickly filed immigration paperwork because he demanded she work to provide him money for alcohol and debts, but she had refused to work without authorization. She also argues that evidence is not scant given the short duration of the one-month marriage where she left rather than stay in an abusive marriage, which is rational behavior.

The Petitioner disputes our conclusion that the dates for how long the couple was together conflicted, asserting that we gave undo weight to K-B-'s petition for dissolution, that there is no difference between the psychiatric evaluation indicating she moved back with her mother at the end of [redacted] and the mother claiming [redacted] 29, and that the Petitioner's statement that it was [redacted] 1 is a minimal

[2] In support the Petitioner cites, among others, *Matter of E-M-*, 20 I&N Dec. 77,79-80 (Comm.1989) and INS Office of the General Counsel, Memorandum for Terrance M. O'Reilly, *"Extreme Hardship" and Documentary Requirements Involving Battered Spouses and Children* (Oct. 16, 1998).

discrepancy, especially in VAWA applications, as the exact day she moved out is not material. She points out that medical records demonstrate she was admitted to a hospital emergency room on [redacted] while photos show K-B- was there and her prescription shows she was still at the address with him.

With the motion the Petitioner submits evidence she contends attests to her character and credibility, including a 2018 award for response to a vehicle accident, a 2018 graduation certificate for a city police academy, and a 2017 certificate for completion of a community police academy. The Petitioner describes K-B- as deceitful and claims that the state initiated a child support collection action against him. In support she provides K-B-'s social media page showing he lives in [redacted] while claiming employment in California and she submits a 2020 court order related to the dissolution of marriage filing wherein her attorney told the court that K-B- could not be located. The Petitioner maintains that she was a victim of his deceit where he wanted a submissive wife to tolerate his alcoholism, but she wanted love and respect.

On motion the Petitioner has not overcome our prior decision dismissing her appeal of the Director's denial. The Petitioner does not resolve deficiencies identified in our prior decision as her statement on motion does not contain additional pertinent details about the couple's relationship and life together. We acknowledge the Petitioner's contention that differences in the dates of when she and K-B- stopped living together are insignificant, and her assertion that K-B- is deceitful. Although the dates are close in proximate time, they are within a short time period making the differences more distinguishable. However, irrespective of specific dates, the Petitioner has not provided additional insight on motion regarding her intent at the time of her marriage to K-B-. We also recognize her claim that K-B- rushed into marriage and wanted her to immediately work so she needed authorization, but her declaration largely focused on abuse she suffered and did not sufficiently describe the circumstances of her decision to marry K-B- or provide sufficient probative evidence about her intent in marrying.

Further, although the additional evidence provided on motion supports her own character and suggests that K-B- is unreliable, it is insufficient to overcome our finding as it does not add support to her contention that she entered the 2016 marriage in good faith. The record overall lacks persuasive or detailed evidence that the Petitioner married K-B- in good faith. Although the Petitioner is correct that we must consider any credible evidence relevant to a VAWA petition, as noted above we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence.

The Petitioner has not demonstrated that our prior decision was based on an incorrect application of law or USCIS policy or that our decision was incorrect based on the evidence in the record at the time of the decision. Accordingly, she remains ineligible for classification as the abused spouse of a U.S. citizen because she has not established that she entered into marriage in good faith.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.