



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

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

In Re: 20487899

Date: MAY 03, 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 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 Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the 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 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 U.S. Citizenship and Immigration Services (USCIS) 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). The Administrative Appeals Office (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 is a native and citizen of the Republic of Georgia who entered the United States in 2015 with a B2 nonimmigrant visa. In [] 2018 the Petitioner married a U.S. citizen, A-S-N-,¹ with whom he claims he resided from then until February 2019. He filed his VAWA petition in April 2019 with personal affidavits, a psychological evaluation, a medical record, financial documents, letters of

¹ We use initials to protect individual identities.

support, civil documents, and photographs. The Director denied the petition, finding that the Petitioner did not establish that he resided with A-S-N-, that he was battered or subjected to extreme cruelty by her, or that he entered into the marriage in good faith. On appeal the Petitioner submits a brief, affidavits from his mother and sister, and an *amicus* brief in conjunction with unrelated litigation that addresses the intent of VAWA legislation generally and joint residence specifically.

In his affidavits, the Petitioner stated he came to the United States to visit his mother, and while at a party performing traditional songs with Georgian friends he noticed A-S-N- and asked her to dance, and they then began dating, going to restaurants and movies several times a week. He asserted that he could not think of anything but her, that after a few weeks they decided to marry, and that he moved into her apartment. The Petitioner stated that they honeymooned at the shore and had great memories. He recalled that A-S-N- liked the attention he gave her by making her coffee and taking her to work, but that she started coming home late and began getting angry. The Petitioner described A-S-N- as sometimes nice and sometimes irritated, and she began demanding money, belittling him, sending angry text messages, and claiming he had no right to ask her questions. He stated that they moved to a more affordable apartment in his mother's home in November 2018 and he hoped the change would help their relationship, but A-S-N- again insulted him, talked about other men, and threatened to kick him out if he did not give her money, to have him deported, and to kill his mother's dog. The Petitioner claimed that A-S-N- once called to say she was with another man and did not want the Petitioner, and when she then found him at home, she tried to push him down the stairs, so in February 2019 he went to a homeless shelter. The Petitioner asserted that A-S-N- ruined him psychologically.

In a request for evidence (RFE) the Director identified specific inconsistencies between the Petitioner's 2014 visa application, that indicated he was married, and a 2013 divorce certificate submitted with his VAWA petition. The RFE also addressed discrepancies in residence addresses, financial records, the spelling of A-S-N-'s given name, and the date of the couple's marriage. The Petitioner responded that he divorced his wife in Georgia in 2013 but, in an effort to reconcile, planned to visit the United States with her, and also claimed that a friend helped them apply for visas but, unknown to the Petitioner, indicated on the visa applications they were still married. The Petitioner clarified that he moved in with A-S-N- on [REDACTED] 2018, and that in late October or November 2018 they changed apartments. He explained that because of his low income he could not contribute to a bank account but gave cash to A-S-N-. The Petitioner further explained that he misspelled A-S-N-'s given name because he pronounced it with an accent, that listing their marriage date as [REDACTED] 12 rather than [REDACTED] was a typo, and that he has stress-related memory problems.

A letter from the Petitioner's mother stated that he and A-S-N- rented an apartment in her home in November 2018. She described the relationship between the Petitioner and A-S-N- as normal but a few weeks after moving in she heard A-S-N- verbally abusing and blackmailing the Petitioner that she would report him to immigration officers if he did not give her money. The mother further asserted that A-S-N- kicked her dog, that she noticed scratches on the Petitioner's face, and that after A-S-N- tried to push him down the stairs the Petitioner went to a shelter to be alone. A letter from a homeless shelter team leader confirms that the Petitioner stayed there but provides no further detail.

The psychosocial evaluation indicates that the Petitioner reported being attracted to A-S-N- by her positive nature, that he sought comfort in her caring manner, that they met weekly and became romantically involved discussing mutual interests, and that they married in a private ceremony. It

goes on to describe abuse as reported by the Petitioner and provides a diagnosis of major depressive disorder, posttraumatic stress disorder, and panic attacks. An updated evaluation submitted with the RFE response added that the Petitioner could be expected to forget basic information due to spousal abuse and refers to a neurological examination that assessed him with conversion disorder, occlusion and stenosis of other precerebral arteries, memory deficit, and tremor.

In denying the petition, the Director determined that because of inconsistencies in the record the Petitioner was not a reliable witness and his statements carried diminished weight. The Director referred specifically to the Petitioner's visa application that indicated he did not have help filling out the application and noted that he did not correct the record during his consular interview. The Director also noted that the Petitioner misspelled his spouse's given name and the misspelling showed up in the psychosocial evaluation as did the wrong date of marriage, indicating they were not a typographical error and nor the result of memory deficit caused by abuse, as suggested by the Petitioner. The Director noted that a medical report showed the Petitioner had memory deficit but did not attribute it to spousal abuse.

Regarding shared residence, the Director found that the Petitioner's affidavits did not provide detail of their joint residence, home furnishings, residents, neighbors, and daily routines, and did not describe any activities that took place there. The Director noted that the Petitioner was added to A-S-N-'s energy bill, which showed a past due balance so did not indicate it was paid through a shared account, and that bank statements covering two months showed no transactions to provide evidence of an active account used by both of them to pay residential expenditures. The Director pointed to an address discrepancy between the Form I-360 and the Petitioner's Form I-485, Application to Adjust Status, and found that although an affidavit from the Petitioner's mother corroborated his claim of moving to her home, it was not signed and included no identity documents to confirm the mother as the author. The Director referred to the Petitioner's claim that after an incident with A-S-N- he went to a shelter but concluded that as the address from which he departed was his mother's home it was implausible that A-S-N- would kick him out and he would travel 62 miles to [REDACTED] to stay at a homeless shelter.

The Director determined that the Petitioner's affidavits carried lessened evidentiary weight and lacked sufficient detail with corroborating evidence of battery or extreme cruelty. The Director found that the Petitioner's assertions seemed based on common marital problems in a deteriorating marriage, and that he did not provide evidence that he paid for any financial liabilities or that A-S-N- pushed him. The Director concluded that the psychosocial evaluation was based on information provided by the Petitioner, and because he was not a credible witness, the report was insufficient to establish that he was battered or subjected to extreme cruelty.

In determining the evidence was not sufficient to establish good faith marriage, the Director referred to the Petitioner's misspelling of A-S-N-'s given name, his error in the marriage date, and the psychosocial evaluation being based on information he provided. The Director noted that the Petitioner was added to A-S-N-'s energy bill with no evidence that they paid expenses through a shared account, and that a joint bank account did little to establish commingling of resources or shared responsibilities as it had a small balance, a lack of transactions, and no evidence that both the Petitioner and A-S-N- used the account. The Director also found that photographs showed the couple at the same time and place but no additional information. The Director concluded that because of these

deficiencies, evidence in the record provided minimal insight into the dynamics of the couple's relationship and was not sufficient to establish that the Petitioner entered marriage in good faith.

On appeal, the Petitioner argues, through counsel, that USCIS went against the ameliorative goals of VAWA legislation and the intent of Congress when it attempted to discover problems and undermine the goals of the law. He contends that USCIS should use the any credible evidence standard and points out the evidentiary hurdles of a petitioner to provide primary evidence. He maintains that a petitioner is only required to live with a spouse at one point in time and that Congress took a weaker stance for joint living and extended protection to living with an abuser at any time. The Petitioner contends that his mother's affidavit, notarized and resubmitted on appeal, and that of his sister corroborate his joint residence with A-S-N-.

The Petitioner maintains that domestic violence is not limited to the household and argues that USCIS concluded that he must prove joint residence to prove abuse, overstepped by connecting the two requirements, and then disregarded the abuse although the law does not state specifically that a petitioner must reside with the abuser during the marriage. The Petitioner asserts that he attested to being pushed down the stairs and scratched by A-S-N- and that his mother witnessed the scratches and also stated that A-S-N- mistreated the family dog, showing a cycle of violence. He notes there were other forms of abuse, like unfaithfulness, using his immigration status to excuse her actions, and threatening deportation. The Petitioner argues it is harsh for USCIS to find that presented facts resemble only deterioration of a marriage and that USCIS should apply the provisions of VAWA with the goal of providing access to justice rather than focus on fraud detection. The Petitioner maintains that USCIS found the psychological evaluation lacks credibility because information was provided by the him but he argues that an independent expert is not merely restating words and that a licensed social worker who specializes in immigrant cases will be able to distinguish fact from fiction.

The Petitioner contends that USCIS applied legally unsubstantiated criteria about the plausibility that A-S-N- kicked him out of his mother's residence, which he describes as an independent part of the home, and that he went to a [REDACTED] shelter, which he describes as a location he knew and was the first location he recalled in effort to get away from A-S-N-. The Petitioner contends that he provided evidence of memory loss to address the misspelling of A-S-N-'s name and error in the date of cohabitation, and that the psychosocial evaluation got the errors from documents but conducted an independent interview of the Petitioner, and that the medical report merely indicates that mistakes are due to memory loss.

In her affidavit the Petitioner's sister's claims she once heard A-S-N- screaming at the Petitioner in their home, then heard the sound of breaking glass, and found the Petitioner nervous with a red face and he told her the couple was arguing. The sister stated that she offered to take them all to lunch but A-S-N- said she was too busy and to go alone with the "loser" brother. The sister states that A-S-N- regularly belittled the Petitioner and was dissatisfied with his income, but that the Petitioner tried to hide the problems.

Upon review of the record, we agree with the Director that the Petitioner has not established that he entered into marriage with A-S-N- in good faith. The arguments on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to overcome the Director's decision. The Petitioner argues that he submitted ample evidence, but his affidavits only state that he noticed A-S-

N- at a party and they started dating but offer little insight into the development of their relationship leading to his decision to marry within a few weeks of meeting her. The Petitioner does not depict their mutual interests, provide a description of a wedding ceremony and celebration, or offer details of their daily life and routine together leading up to or after their marriage. The affidavits from the Petitioner's mother and his sister briefly describe the behavior of A-S-N- that they witnessed but provide little detail of the couple's interactions or make other observations that would demonstrate the Petitioner's intent upon entering the marriage. The psychological evaluation primarily focuses on abuse reported by the Petitioner but offers few details about the development of the couple's relationship to support that the Petitioner entered into the marriage in good faith. The record does not contain sufficient evidence to establish that the Petitioner entered into marriage with A-S-N- in good faith.

As noted, the Director also determined that the Petitioner did not demonstrate that he and A-S-N- resided together or that he was subjected to battery or extreme cruelty by her. As the Petitioner has not established that he entered into marriage with A-S-N- in good faith, we decline to reach and hereby reserve the Petitioner's appellate arguments on these issues. *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).

In conclusion, because the Petitioner has not established that he entered the marriage in good faith, he has not demonstrated that he is eligible for VAWA classification.

ORDER: The appeal is dismissed.