U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18236951

Date: MAY 12, 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 Abused Spouse or Child of U.S. Citizen (VAWA petition). The matter is now before us on appeal. On appeal, the Petitioner submits a statement asserting his eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *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 they demonstrate 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).

II. ANALYSIS

The Petitioner, a native and citizen of Serbia, initially entered the United States in H-2B nonimmigrant status in March 2008. In [redacted] 2009, he married a U.S. citizen, T-J-,[1] with whom he claims he resided from [redacted] 2009 to December 2012. The Petitioner filed his VAWA petition in September 2015. In denying the VAWA petition, the Director determined that the Petitioner did not establish that he was battered or subjected to extreme cruelty by T-J-.

[1] We use initials to protect individual identities.

The Director initially reviewed the Petitioner's statement, statements from acquaintances, counselors' letters, and a medical letter, and referenced details of the claimed abuse provided in the statements and letters. The Director found this evidence insufficient to establish that the Petitioner was battered or subjected to extreme cruelty by T-J-. Therefore, the Director issued a request for evidence (RFE), noting that while the Petitioner may have been in an unhealthy marital relationship with T-J-, every unkind word or unhealthy interaction does not constitute abusive behavior for immigration purposes. The Director further noted that marital tensions and incompatibilities alone do not constitute extreme cruelty, the claimed marital difficulties were not beyond those encountered in many marriages, and the Petitioner's statement lacked sufficient detail of battery or extreme cruelty. In response to the RFE, the Petitioner submitted a pharmacy note and a psychological report. The Director referenced details of the claimed abuse mentioned in the psychological report and the prescription of medication to treat acid reflux. However, the Director found that the additional evidence did not overcome the deficiencies mentioned in the RFE. As such, the Director determined that the Petitioner did not establish that he was battered or subjected to extreme cruelty by T-J-.

On appeal, the Petitioner submits a statement, asserting that he has been under treatment for a gastric ulcer for seven years for which he takes prescription medication, that T-J-'s cruel, inhumane treatment and the destruction of their marriage caused him constant stress and insomnia, and that he developed cancer of the esophagus due to her psychological abuse.[2] The Petitioner has not provided documentary evidence to support his claim that he has cancer or that he has any medical issue related to or resulting from being battered or subjected to extreme cruelty in his marriage to T-J-.

Based on a *de novo* review of the record below, we adopt and affirm the Director's decision that the Petitioner did not establish by a preponderance of the evidence that he was battered or subjected to extreme cruelty by T-J-. *See, e.g.*, *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting or affirming the decision below "in whole or in part, when [the Board is] in agreement with the reasoning and result of that decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (noting that, "[a]s a general proposition, if a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by" the decision below, "then the tribunal is free to simply adopt those findings" provided the tribunal's order reflects individualized attention to the case"). The Director's decision thoroughly discussed relevant evidence submitted by the Petitioner, and his submission on appeal did not include any new evidence, aside from his brief, unsupported statement. As the Director correctly determined that the evidence submitted in support of the Petitioner's claim that he was battered or subjected to extreme cruelty by T-J- was insufficient, and the Petitioner has not provided sufficient new evidence on appeal to overcome this finding, he has not established by a preponderance of the evidence that he was battered or subjected to extreme cruelty by T-J-. Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under VAWA.

ORDER: The appeal is dismissed.

[2] The Petitioner filed his appeal in February 2020 and stated that he would submit a brief and/or additional evidence to us within 30 days of filing the appeal. We have not received a brief or additional evidence and will therefore adjudicate the appeal on the record before us.