U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24400879

Date: FEB. 24, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification 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), as an abused spouse of a U.S. citizen. The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident (VAWA petition), concluding that the record did not establish the Petitioner was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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. 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).

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 has resided outside the United States for a period of two years after the date of marriage or establishes by clear and convincing evidence that the marriage was entered into in good faith. *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).

II. ANALYSIS

The Petitioner entered the United States in December 2013 without admission. He married a U.S. citizen, A-J-,[1] in [redacted] 2016 while he was in removal proceedings. In April 2018, the Petitioner filed the instant VAWA petition based on his marriage to A-J-, claiming that she engaged in abusive behavior. The VAWA petition reflects that they started residing together in September 2016 and were still residing together at the time of filing the VAWA petition. The Director noted the Petitioner married A-J- while in removal proceedings and as the record did not establish he entered into a good faith marriage under the clear and convincing standard, his VAWA petition was therefore deniable under section 204(g) of the Act. As such, the Petitioner did not demonstrate he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a U.S. citizen.

The Director listed evidence submitted by the Petitioner with his VAWA petition and in response to a request for evidence (RFE). We incorporate that list of evidence into our decision. The Director first addressed evidence submitted with the VAWA petition. The Director provided details from the Petitioner's initial affidavit and four third-party affidavits, which included how he met A-J-, his decision to propose to her, how he married her, and how they spent time together. However, the affidavits did not describe any of their mutual interests, or circumstances and events demonstrating their involvement during the marriage. The Director also noted their marriage certificate did not independently establish a good faith marriage, the driver's licenses were not sufficient to establish maintenance of a shared residence, and the leases from 2016 and 2017 were not accompanied by evidence of payments to show commingling of finances or shared liability. The 2016 and 2017 tax returns were not accompanied by evidence that they were actually filed, of a refund, or of a payment history from a joint bank account. The life insurance policy lacked evidence of premium payments, the utility statements were not supported by payment history or account authorization correspondence, and the photographs captured one-time events and lacked explanations. Due to these deficiencies in meeting the clear and convincing standard, the Director issued an RFE and then reviewed the Petitioner's response to the RFE.

The Petitioner's updated affidavit described mutual feelings with A-J-, their courtship and living arrangements, their proposal and engagement, how they cooked for each other, and the supporting evidence he submitted such as the life insurance policy and tax filings. The Director determined that the affidavit lacked clear and convincing details, did not provide insight into the dynamics of their marriage, did not demonstrate commingling of resources or shared financial responsibilities, and was not supported by documentation to support his claim of spending their savings on shopping, eating out, and wedding preparations. The third-party affidavits provided additional details of the Petitioner's living arrangements and interaction with A-J-, but they lacked clear and convincing details and did not provide insight into the dynamics of the marriage, which would provide insight into commingling of resources or shared responsibilities. The accountant's statement added credibility to the claim the

[1] Initials are used throughout this decision to protect the identity of the individual.

2016 and 2017 tax returns were submitted, but it did not provide further insight showing the Petitioner and A-J- had a vested interest in filing jointly such as a refund or payment history from a joint bank account. The apartment leases from 2018, 2019, and 2020, and hand-written rent receipts were also found to have evidentiary issues. The receipts had a similar handwriting style and signatures, there was no reference to who held the primary responsibility for payment or where the funds were derived from to show a commingling or sharing of financial resources and responsibilities. Lastly, the life insurance policy lacked evidence of premium payments, the utility statements were not supported by payment history or account authorization correspondence, and the photographs captured one-time events and lacked explanations. Upon review of the evidence in the record, the Director determined the Petitioner did not establish he entered into a good faith marriage with A-J- under the clear and convincing standard, his VAWA petition was deniable under section 204(g) of the Act, and he was not eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a U.S. citizen.

On appeal, the Petitioner submits a brief, an updated affidavit, two third-party affidavits, and previously submitted evidence. Based on a de novo review of the record, we adopt and affirm the Director's decision that the Petitioner did not establish he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough analysis of whether the Petitioner entered into a good faith marriage under the clear and convincing evidence standard, as described above, and his submission on appeal does not sufficiently address the evidentiary deficiencies mentioned by the Director or include new evidence which would overcome the Director's findings. The Petitioner's updated affidavit and the two third-party affidavits include similar information as the prior affidavits from the Petitioner and third parties. The Petitioner's updated affidavit does not demonstrate commingling of resources or shared financial responsibilities and is not supported by documentation to support his claim of spending their savings on shopping, eating out, and wedding preparations. The third-party affidavits do not provide insight into the dynamics of the marriage which would reflect a commingling of resources or shared responsibilities. The record does not include evidence to show the Petitioner and A-J- had a vested interest in filing jointly tax returns, such as a refund or payment history from a joint bank account. For the hand-written rent receipts, there is insufficient evidence to show who held the primary responsibility for payment or where the funds were derived from to show a commingling or sharing of financial resources and responsibilities. While the life insurance certificate indicates that premium payments have been made, the utility statements are not supported by payment history or account authorization correspondence, and the photographs still lack explanations. Upon review of the evidence in the record, the Director correctly determined the Petitioner did not establish he entered into a good faith marriage with A-J- under the clear and convincing standard, his VAWA petition is deniable under section 204(g) of the Act, and he is not eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a U.S. citizen.

ORDER: The appeal is dismissed.