In Re: 27966544 Date: SEP. 15, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner met the good faith marriage or battery or extreme cruelty requirements under VAWA. 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, among other requirements, that they were "battered or subjected to extreme cruelty" perpetrated by the spouse during the marriage. Section 204(a)(1)(A)(iii)(I)(bb) of the Act. The term "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi).

The VAWA petitioner is also required to establish that they entered into the qualifying marriage to the abusive U.S. citizen spouse in good faith and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 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). 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 citizen and national of Nigeria, entered the United States in October 2016 as a visitor. In [redacted] 2017, the Petitioner married J-M-[1], a U.S. citizen, and filed the current VAWA petition based on that relationship. As evidence of battery or extreme cruelty the Petitioner submitted a personal statement to the Director. In his personal statement the Petitioner described the first few weeks after marrying J-M- as "hostile" because he and J-M- would hardly speak to one another. The Petitioner further stated that J-M- began taking secret phone calls and speaking in low conversations. He later discovered that J-M- had engaged in sexual relations on their shared bed. After confronting her, J-M- said she made a mistake in marrying the Petitioner and thought he would be able to take care of her financially. The Petitioner then stated that he was reminded about his immigration status on a regular basis and that after becoming ill for a few days J-M- left the apartment and did not return for a few months. The Petitioner stated that he opened a letter for his spouse regarding a pre-natal care appointment and assumed the baby was his. He stated that it was not until after the baby was delivered that he found out it was not and his spouse left the hospital without seeing him and he has not seen her since. The Director determined that the evidence provided in support of the petition was insufficient and requested additional evidence related to the good faith marriage, residence and battery or extreme cruelty requirements. In response, the Petitioner provided a second personal statement, rent receipts, an invoice for a Verizon order, some medical documents and an affidavit from pastor O-O-. In his second personal statement, the Petitioner restated the claims made in his initial statement - that his spouse was unfaithful, that she had a child with another man and that she would make threatening statements about his immigration status. The Director issued an additional notice of intent to deny (NOID) requesting additional evidence that the Petitioner's prior marriage was properly terminated. The Petitioner responded by providing a decree nisi, divorce absolute, and printout from the [redacted] State Judiciary online case system. The Director determined that the Petitioner's account of his marriage indicated that there were marital incompatibilities and that J-M- engaging in an extra-marital affair did not amount to extreme cruelty.

On appeal, the Petitioner argues that the Director's decision was arbitrary and did not consider all the evidence collectively. The Petitioner further argued that the extra-marital affair, telling the Petitioner that he is "too old to satisfy her sexually" and conceiving a child with her prior boyfriend during their marriage are acts that constitute extreme cruelty. Upon de novo review, the instances of abuse claimed by the Petitioner do not rise to the level of extreme cruelty as defined under 8 C.F.R. § 204.2(c)(1)(vi). As stated above, while USCIS must accept "any credible evidence" it is the sole discretion of the Director to decide what evidence is credible and how much weight to give such evidence.

The Petitioner has described instances where his spouse continued her relationship with a prior boyfriend after their marriage resulting in the birth of a child. The Petitioner also mentions, without probative detail, that his spouse would use his immigration status as a threat and would often shout or

[1] We use initials to protect the privacy of individuals.

yell at him. The Petitioner's statements lack the detail and specificity required to establish that his spouse's actions were part of a pattern of violence meant to control or intimidate him. We acknowledge the claims of psychological harm due to his spouse's infidelity, however, the conduct of the Petitioner's spouse does not rise to the level of extreme cruelty. While we are sympathetic to the difficulties in his marriage to J-M-, the Petitioner has not established, by a preponderance of the evidence, that he was battered or subjected to extreme cruelty, as required. Section 204(a)(1)(A)(iii)(I)(bb) of the Act. Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under VAWA.

As we have determined the Petitioner has not established he was subjected to battery or extreme cruelty by J-M-, which is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments and evidence regarding whether he entered into marriage with J-M- in good faith. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that "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).

ORDER: The appeal is dismissed.