U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18949919

Date: AUG. 16, 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 dismissed a motion to reconsider. 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).

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 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 and not solely for immigration purposes. *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").

II. ANALYSIS

A. Facts and Procedural History

The Petitioner, a native and citizen of Mali, filed his VAWA petition in January 2019 based on his 2011 marriage to a U.S. citizen, K-A-,[1] with whom he claims he resided from September 2010 until September 2018. In support of his VAWA petition he submitted personal affidavits along with affidavits from two friends; a lease agreement from 2012; bank statements from 2011 and 2018; tax transcripts for 2018 and 2019; a life insurance renewal notice from 2019; and photographs. The Director found that the Petitioner did not establish by the preponderance of the evidence that he married K-A- in good faith, that he was eligible for immigrant classification, or that he was subjected to battery or extreme cruelty. The Director further determined that the petition was deniable under section 204(g) of the Act because the Petitioner married his spouse while he was in removal proceedings, the record did not indicate that he had spent two years outside of the United States since the marriage or that removal proceedings had been terminated, and that the Petitioner did not establish by clear and convincing evidence that he entered the marriage in good faith, as provided by section 245(e) of the Act.

The record reflects that in 2000 the Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal using another name and date of birth while claiming to be from Mauritania and having entered the United States in May 1999. An asylum officer determined the Petitioner's testimony was not credible and referred his case for a hearing before an Immigration Judge, who in [redacted] 2002 issued an order of removal when the Petitioner failed to appear. The record shows that in 2005 the Petitioner, under the name used on his VAWA petition, was issued a B-1 visa by a U.S. embassy and then entered the United States in June 2005 carrying a passport from Mali.

B. VAWA Petition

In the Petitioner's affidavit submitted with his VAWA petition he claimed that he entered the United States for the first time in May 1998, that he returned to Mali in June 1998, and did not return to the United States until June 2005. The Petitioner states that he remained until July 2009, when he visited Mali, and then returned to the United States in October 2009. He then described meeting K-A- in a restaurant at Christmas 2009 and finding her attractive, and thereafter having frequent conversations with her. The Petitioner recalled that he cooked African dishes for her, she taught him to make Honduran food, and he met her young son. He claimed the couple moved in together in September 2010, he met her family at Thanksgiving, and on New Year's Eve 2010 K-A- said she wanted to marry right away. The Petitioner stated that they married at a courthouse and then had a meal with friends. The Petitioner stated that before his 2012 interview relating to the Form I-130, Petition for Alien Relative filed by K-A-, they argued and she insulted him, and they then made errors during the interview.[2] He stated that despite this they then became closer and were happy until December 2017, when she left to stay with a friend, would not come home, and did not answer his phone calls. The Petitioner stated that after weeks K-A- returned home, but in September 2018 he came home early from work to find her in bed with the friend, that she yelled and slapped him, and that she then moved out.

In affidavits submitted with the petition, brothers A-S- and H-S- identified the Petitioner as a close friend and asserted that he and K-A- married in good faith. They each recalled the Petitioner telling

[1] We use initials to protect individual identities.
[2] The record shows that the Form I-130 petition was denied in 2012.

them when he met K-A-, observing the couple's interaction at a restaurant, and being unable to attend the wedding ceremony but going to dinner afterward. A-S- and H-S- each maintained that they intervened to help resolve issues between the Petitioner and K-A-, and that the couple seemed very happy for years until late 2017 when K-A- left for several weeks to stay with a friend, later returned to the Petitioner but did not seem the same, and in September 2018 she moved out.

In denying the petition, the Director determined that inconsistencies in the record showed the Petitioner was not a credible witness, noting specifically that he assumed another identity for his asylum application that was found not credible, and he did not disclose using that identity until filing his VAWA petition. He also provided misleading information about his immigration history, for example claiming that he departed the United States in 1998 when he was in fact ordered removed in 2002. The Director listed the evidence submitted by the Petitioner but found it insufficient to establish good faith marriage and surmised that the affidavits from the Petitioner's friends were written in collaboration with the Petitioner and therefore not sufficient evidence. The Director concluded that the lease agreement did not offer insight into the Petitioner's intent upon entering marriage and that bank account statements did not show transactions associated with household expenses, such as payment of utilities or joint responsibilities. The Director noted that a life insurance policy was opened in November 2018, after the Petitioner claimed K-A- abandoned him, and that tax transcripts were dated after he stated she left him and he indicated married filing separately. The Director determined that photographs without thorough explanation did not provide insight into the dynamics of the marriage, that they were not sufficient to make a positive determination of good faith marriage, and that the Petitioner first indicated the photographs were from 2010 and 2012 but then that they were taken in 2015, while the Director concluded that they appeared to be from a single day.

In the motion to reconsider, the Petitioner asserted that the denial was arbitrary and biased and did not explain why witnesses were not credible. He argued that according to Federal Rules of Evidence the decision incorrectly rejected evidence as insufficient now because he previously used another identity while the Director did not cite legal authority to bar adjustment of status for using another name in filing Form I-589. He further contended it was against the law to find supporting testimonies not credible because he had assumed another name for asylum.

The Director denied the motion, explaining that the VAWA petition denial addressed why evidence was not sufficient, apart from credibility concerns, and that the credibility finding was based on more than the asylum application, but also the Petitioner's failure to disclose the prior use of another identity on subsequent applications for immigration benefits. The Director further determined that the third-party affiants indicated that the Petitioner assisted them in writing affidavits, that they read his affidavits, and that they discussed the information provided in their affidavits, so it appeared that the Petitioner influenced them in what was written.

On appeal, the Petitioner reasserts that the Director erred finding his testimony insufficient because he had previously used another name. He argues it is immaterial and incorrect to conclude that because he had used another identity, the evidence submitted now was not credible, and contends it is an overbroad assumption that can only be used when good moral character is at issue. To support his assertion that using another identify in a prior application does not diminish evidence in the current petition, the Petitioner cites the Federal Rules of Evidence, but we note that the Federal Rules of Evidence apply to proceedings in federal courts, and the formal rules of evidence are not applicable in

immigration proceedings. *Matter of Vides Casanova*, 26 I&N Dec. 494, 499 (BIA 2015) (*citing Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-40, 1050-51 (1984)). The Petitioner further maintains that the Director did not explain why affidavits of friends were not credible and asserts that the witnesses never stated that they read his affidavit, discussed the information provided in their affidavits, or that he assisted them in writing. He points out that they only conceded that they used a professional editing service for help.[3]

C. The Petitioner Did Not Establish He Entered Marriage in Good Faith

A review of the record does not indicate that the Petitioner is subject to the heightened standard of clearly and convincingly establishing good faith marriage for marrying while in removal proceedings. The record shows that the Petitioner was ordered removed from the United States in 2002 under another identity. The record further shows that in May 2005 he was issued a B-1 visa by the U.S. consulate in Niamey, Niger, using a Mali passport issued in October 2004, and that he then entered the United States with that visa in June 2005. The record thus indicates that the Petitioner departed the United States after his 2002 removal order, and as his departure executed the removal order, he was no longer in removal proceedings in 2011 when he married K-A-.

However, the Director also determined that the Petitioner did not meet the lower standard of establishing by a preponderance of the evidence that he entered into marriage with K-A- in good faith. Upon review of the record, we agree with the Director's determination. The Petitioner's arguments on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to overcome the Director's decision.

On appeal, the Petitioner contests the Director's determination about his credibility but does not otherwise provide additional information or explanation to address deficiencies identified by the Director. Irrespective of the Petitioner's credibility as it relates to prior applications, his affidavit and the evidence he submitted in support of the instant petition are insufficient to demonstrate that he entered into marriage with K-A- in good faith. In his affidavit he generally described meeting K-A- and finding her attractive, and he mentions comments that they made to each other and specific foods that they ate. But the Petitioner does not provide information about mutual interests, describes limited shared experiences, and offers little insight into the development of the relationship with K-A- leading to his decision to marry. He does not offer details of their daily life or a description of their routine leading up to or after their marriage to support that he entered the marriage in good faith. The letters of support from friends are also general without specific detail and offer few observations of the Petitioner's relationship and interactions with K-A- leading to or after the marriage. On appeal the Petitioner does not address these deficiencies and discrepancies in the submitted documentation identified by the Director.

The Director further determined that the Petitioner did not demonstrate that he suffered battery or extreme cruelty. As the Petitioner's inability to establish that he entered into marriage with K-A- in good faith is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are

[3] In their affidavits both A-S- and H-S- indicate that English is not their native tongue, that they sought editing help, but that they understood the content of their affidavits.

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).

The record does not contain sufficient evidence to establish that the Petitioner entered into marriage in good faith. He has therefore not demonstrated that he is eligible for VAWA classification.

ORDER: The appeal is dismissed.