



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

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

In Re: 22660352

Date: DEC. 13, 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), finding that the Petitioner did not demonstrate that he was eligible for immigrant classification, that he resided with his U.S. citizen spouse, and that he entered the marriage in good faith. The matter is before us on appeal. We review the questions in this matter *de novo*. See *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 VAWA petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into marriage with their U.S. 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 we 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 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, a native and citizen of Mexico, entered the United States without inspection in 2008. On [REDACTED] 2011, the Petitioner was issued a Form I-862, Notice to Appear, placing him in removal proceedings as being present without admission or parole.¹ On [REDACTED] 2011, he married a U.S. citizen, O-C-P-C-,² with whom he claims he resided from November 2010 until April 2013, and filed his VAWA petition in June 2019. In support of his VAWA petition and in response to the Director’s request for evidence (RFE) the Petitioner submitted personal affidavits, third-party letters of support, financial records, social media printouts, country conditions information for Mexico, and civil documents. On appeal, the Petitioner submits a brief along with additional third-party affidavits.

In his affidavits the Petitioner stated that he met O-C-P-C- at work when she was still in high school, recalled teasing each other, described her as having charisma, and observed that he saw how she could manipulate men. He stated that she later asked him to be her boyfriend; that they saw each other at work and dating; that they had similar senses of humor and enjoyed skateboarding; that he fell in love; and that they made plans. He maintained that he preferred a slower development of their relationship, but O-C-P-C- wanted to move fast and controlled the relationship. The Petitioner stated that in [REDACTED] 2011 he was arrested for a driving under the influence of alcohol violation (DUI), was taken into custody by U.S. Immigration and Customs Enforcement (ICE) agents but released on bond because O-C-P-C- told agents they were getting married, and that because she believed they needed to marry immediately the couple had a ceremony with a justice of the peace in their apartment. Much of the Petitioner’s affidavits described O-C-P-C-’s behavior, including insulting him, jumping on him, staying away from home, and seeing other men. He stated that O-C-P-C- wanted to get away from her mother, was attracted to him because she could control him, and pushed him to file immigration paperwork³ so she could control him as she was addicted to power over men and to drugs.

In her affidavit, B-R-B-, the mother of O-C-P-C-, maintained that she did not know O-C-P-C- and the Petitioner were dating but after they married the couple rented the bottom floor of her house with a separate entrance. The mother recalled that at the time she was going through her own divorce, did not have much interaction with the couple, and did not realize they were already having problems as O-C-P-C- was drinking and using drugs, staying out, partying with friends, became a stripper, had boyfriends, and did jail time. The mother stated that she suspected a diagnosis of a platelet disorder when O-C-P-C- was a child and the resulting care affected her physical and emotional development causing her later behavior. B-R-B- described the Petitioner as good-hearted and that she suspected drug use caused O-C-P-C- to be cruel to him though he loved her.

¹ The record indicates that removal proceedings have not been terminated.

² We use initials to protect individual identities.

³ A Form I-130, Petition for Alien Relative, filed by O-C-P-C- on the Petitioner’s behalf was denied in September 2013. The record indicates that O-C-P-C- requested withdrawal of the petition.

Letters of support from friends and former co-workers described the couple as seemingly in love and happy but then the Petitioner later describing to them difficulties with O-C-P-C-.

The Director denied the petition, finding that the record did not contain sufficient evidence to demonstrate that the Petitioner was eligible for immigrant classification and that he resided with O-C-P-C-. 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, that the record did not indicate that he had spent two years outside of the United States since the marriage, 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 Director noted that the Petitioner explained that he fell in love with O-C-P-C- when they met, saw her almost daily, and made future plans. The Director also noted that the Petitioner explained that in [REDACTED] 2011 he was arrested for DUI and was later taken into custody by ICE, and that he indicated that he “gave in” after O-C-P-C- told him that they needed to get married as soon as possible. The Director concluded that it appeared the Petitioner was apprehensive about entering marriage, determined it likely that he entered the marriage to avoid being removed from the United States, and found that he did not demonstrate through clear and convincing evidence that the marriage was entered into in good faith and not to circumvent immigration laws.

The Director further determined that third-party affidavits did not offer sufficient insight into the couple’s courtship, shared experiences, common interests, or interactions to establish the Petitioner’s intentions for entering the marriage and that most of the documentation provided by the Petitioner was addressed to each of them separately, therefore not sufficient to show co-mingling of assets, interests, and resources to establish good faith marriage. The Director acknowledged the statement from the spouse’s mother that the couple rented from her, that she provided rent receipts, and that O-C-P-C- posted the Petitioner’s immigration bond in [REDACTED] 2011 but surmised that the totality of the evidence in the record was insufficient to establish good faith marriage.

A petitioner must generally demonstrate good-faith marital intentions by a preponderance of the evidence to establish VAWA eligibility. *See* section 291 of the Act; *Matter of Chawathe*, at 375. Because the Petitioner is in removal proceedings, he is subject to the higher clear and convincing standard, as indicated above. On appeal, the Petitioner does not contest the Director’s determination that he must meet the higher standard of clear and convincing evidence.

On appeal, the Petitioner argues, through counsel, that the Director misrepresented evidence and did not explain what details were missing. He asserts that he submitted a significant amount of evidence showing documents were mailed to the couple at their shared marital address, but the Director dismissed their value because the documents were addressed only to one of them. The Petitioner contends that he provided instances where O-C-P-C- pressured him into things he did not want to do and argues that he gave in only because he loved her. He maintains that she prevented him from visiting his ill mother in Mexico, that she pressured him to marry sooner than he wanted, and that she then pushed him to hire an attorney to file her immigration petition for him. The Petitioner asserts that had he wanted to marry to obtain immigration status rather than to build a life with O-C-P-C- he would have been the one pushing for those things and contends that she only wanted to be free from her mother and to have power over him. The Petitioner argues that third party affidavits detailed the

courtship, shared experiences, common interests, and interactions. He contends that he was blind to O-C-P-C-'s abuse, and he points to the affidavit from her mother about how she admires him and witnessed his abuse from her own daughter as she descended into drug use.

With the appeal the Petitioner submits an updated affidavit from B-A-F-, who identifies himself as a long-time friend of the Petitioner, where he states that after the Petitioner's DUI arrest O-C-P-C- feared for him and told ICE agents she was in love with him, and that friends then raised money for her to post bond. B-A-F- states the couple married for love, got married quickly because ICE agents told them to, and that the Petitioner was not interested in his immigration status until O-C-P-C- pushed him. B-A-F- recalled that the couple then rented a room with him and carried out normal life where the Petitioner loved O-C-P-C- but she was leading a double life that B-A-F- described in an affidavit submitted below as using drugs, being unfaithful, and insulting the Petitioner. The Petitioner also submits an updated affidavit from his uncle, N-C-, who states that the couple visited him on their honeymoon, they talked about plans for a family, and seemed in love. Another friend, L-W-, states that she knew the couple while working together and that they were deeply in love.

The Director concluded that the Petitioner was apprehensive about entering marriage, determined it likely that he entered the marriage to avoid being removed from the United States, and found third-party affidavits were not sufficient to establish the Petitioner's intentions for entering into the marriage. The Director noted that in his affidavits the Petitioner discussed falling quickly in love in O-C-P-C- and marrying at her insistence but offered little insight into the dynamics of the relationship and did not provide sufficient detail to demonstrate his intent in entering marriage with O-C-P-C-. On appeal the Petitioner has not offered additional detail to address the deficiencies.

Third-party affidavits observed generally that the Petitioner and O-C-P-C- were in love, but otherwise did not offer probative detail of interactions with the couple or observations of the couple's behavior together to demonstrate the Petitioner's good faith intentions in entering marriage. The updated affidavit from B-A-F- submitted on appeal adds that O-C-P-C- feared for the Petitioner in ICE custody, that friends helped post bond, and that the couple married for love. The updated affidavit from the Petitioner's uncle adds only that the couple planned a family. Neither updated affidavit provides additional observation or detail of the couple's relationship to overcome the Director's determination that the third-party affidavits did not offer sufficient insight into the couple's relationship and establish the Petitioner's intentions for entering the marriage.

A review of the entire record shows that the Director correctly applied the clear and convincing evidence standard and properly addressed the evidence in determining that the Petitioner did not establish his good-faith marriage to her by clear and convincing evidence as required by section 245(e)(3) of the Act and, consequently, section 204(g) of the Act bars approval of the VAWA petition.

Although not specifically addressing shared residence on appeal, the Petitioner contends that he submitted a significant amount of documentary evidence of shared assets and resources. In the RFE the Director acknowledged that the Petitioner's claim the couple rented a room from O-C-P-C-'s mother with a separate entrance and did not often see the mother, and that the Petitioner submitted billing statements addressed to him only at the mother's address. B-A-F- indicated that the couple lived with him from about May 2011 until September 2012 when they moved with O-C-P-C-'s mother. In his affidavits the Petitioner does not describe a daily routine or activities, or provide details that

would demonstrate a shared residence, either while sharing an apartment with a roommate or when renting a room from O-C-P-C-'s mother. The affidavits from B-A-F- and O-C-P-C-'s mother, B-R-B-, both indicate the couple rented rooms with them but neither describes a daily routine nor provides observations of the couple's interactions to support shared residence. On appeal the Petitioner does not further address the documentation or present additional information to dispute the Director's finding that it was insufficient to demonstrate shared residence, or to otherwise establish shared financial responsibilities. As such, the Petitioner has not overcome the deficiencies identified by the Director in concluding that documentation addressed to the couple individually was insufficient to demonstrate shared residence or to establish that he entered marriage with O-C-P-C- in good faith.

Our review of the record does not establish, as the Director determined, that the Petitioner shared residence with O-C-P-C-, and it does not demonstrate the Petitioner's good-faith marital intentions by a preponderance of the evidence, as generally required to establish VAWA eligibility. As stated, because he entered into marriage while in removal proceedings the Petitioner must establish by clear and convincing evidence that he entered into marriage with O-C-P-C- in good faith. On appeal, the Petitioner has not overcome deficiencies as noted by the Director and established by a preponderance of the evidence that he entered into marriage with O-C-P-C- in good faith and he therefore necessarily has not satisfied the higher burden of demonstrating his good-faith marital intentions by clear and convincing evidence. We therefore find no error in the Director's decision that the Petitioner did not establish by clear and convincing evidence that he entered into marriage in good faith.

Approval of the Petitioner's VAWA petition is therefore barred under section 204(g) of the Act because his marriage to his U.S. citizen spouse occurred while in immigration proceedings. Accordingly, the Petitioner is not eligible for VAWA immigrant classification under section 204(a)(1)(A)(iii) of the Act.

ORDER: The appeal is dismissed.