



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

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

In Re: 16751974

Date: JAN. 31, 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 at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 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. 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).

A VAWA petition cannot be approved if the petitioner entered into the marriage for the primary purpose of circumventing immigration laws. 8 C.F.R. § 204.2(c)(1)(ix). Evidence that the marriage was entered into in good faith may include, but is not limited to: shared insurance policies, property leases, income tax forms, or bank accounts; testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together; birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; or affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii).

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 Camibba*, 11 I&N Dec. 914, 917 (BIA 1966).

It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 805-6 (AAO 2012). In cases where section 204(g) of the Act applies, the burden of proof relating to establishing a good faith marriage is the higher “clear and convincing evidence” standard at section 245(e)(3) of the Act. To satisfy her burden, the petitioner may submit any credible evidence for us to consider in our review, and we will determine, in our sole discretion, the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The record reflects that the Petitioner is a native and citizen of India who last entered the United States via parole in April 2006, married his U.S. citizen spouse, C-S-M-¹, in 2015, and filed a VAWA petition in August 2018 claiming the couple lived together from 2015 to July 2017. The couple divorced in 2019. The record also reflects that the Petitioner was issued a Notice to Appear placing him in removal proceedings in 1999 and he was ordered removed by an Immigration Judge in 2007. With the petition and in response to the Director’s request for evidence (RFE), the Petitioner submitted a personal affidavit; civil documents; a residential lease; two 2016 bank statements; income tax returns for 2017, 2018, and 2019; a letter confirming his employment; a psychological evaluation; text printouts of an exchange with his spouse; three letters of support from friends; a letter of showing service with the Sikh community; a police records request; and photographs. The Director denied the petition, finding that the Petitioner did not establish he entered into marriage in good faith and had shared a residence with his spouse.

In his affidavit below the Petitioner briefly described meeting C-S-M-, beginning a courtship, talking about mutual interests, and agreeing to marry. The Petitioner also stated that she encouraged him to apply for permanent residence. The Petitioner maintained C-S-M changed in 2017 when she lost her job and began demanding money, charging his credit cards, belittling him, insulting his family and race, threatening to withdraw her immigrant petition to have him deported, and then filing for divorce. A friend of the Petitioner, J-S-, stated that C-S-M- was clearly in love with the Petitioner, he watched their relationship bloom, and the marriage was smooth for two years before C-S-M- began to abuse the Petitioner, extorting money after she lost her job. Another friend, K-R-, asserted that the couple was happy and that C-S-M- was kind in beginning, but that in 2017 she lost her job and her behavior changed, and that the Petitioner told him he suffered in his marriage. M-K-S-, who identified herself as working in a law office that represented the Petitioner in immigration matters, stated that in 2017 C-S-M- became rude to staff and would withhold payments.

A psychological evaluation showed the Petitioner reported that after two years of marriage his spouse began insulting him, demanding money, being verbally hostile, and threatening to have him deported. The psychologist observed that the Petitioner exhibited symptoms of post-traumatic stress disorder,

¹ We use initials to protect individual identities.

major depressive disorder, and generalized anxiety disorder, and found that he suffered anxiety, depression, altered sleep, memory loss, inability to function at work, and high blood pressure.

The Director determined that the Petitioner's VAWA petition was deniable under section 204(g) of the Act because he married his spouse while in removal proceedings and had not spent two years outside of the United States since the marriage. The Director found the record did not show that removal proceedings had been terminated, that the Petitioner did not request a *bona fide* marriage exemption, and that he 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 concluded that the Petitioner was not eligible for immigrant classification under 201(b)(2)(A)(i) of the Act and went on to determine that the Petitioner did not establish he had shared a residence with his spouse and entered the marriage in good faith as required to establish eligibility for immigrant classification under VAWA.

In denying the petition the Director found that the Petitioner's affidavit lacked probative detail to corroborate his claim of good faith marriage, and that letters from third parties used nearly identical language while being general without specific information about the Petitioner's marital relationship and did not describe particular interactions to shed light on the marriage. The Director determined that the record contained little evidence of commingling of resources and shared responsibility, noting that the residential lease was not signed by C-S-M and that two bank statements were incomplete and showed only a minimal balance, so offered little evidence of financial transactions normally associated with a *bona fide* marriage. The Director noted that the income tax returns only contained the Petitioner's name and indicated filing single even though they were married. The Director also referred to text communications between the Petitioner and his spouse but found they did not establish shared residence and good faith marriage. The Director surmised that evidence was not sufficient to overcome a finding that the marriage was entered into for the purpose of evading immigration laws as the Petitioner did not demonstrate by clear and convincing evidence that he entered marriage in good faith. As the Petitioner did not establish that he entered into his marriage in good faith by a preponderance of the evidence, he necessarily cannot demonstrate by clear and convincing evidence that he married in good faith. The Director further determined that the Petitioner did not provide satisfactory evidence to demonstrate he was a person of good moral character as the record showed he was arrested in 2011 for forcible touching of the sexual or intimate parts of someone else, but he did not provide an arrest report as sought by the RFE. The Director noted that third party letters called the Petitioner a respectful man but offered little detail.

On appeal the Petitioner indicates through counsel that no brief or additional evidence would be submitted and does not contest the Director's determination that he remains in removal proceedings and is subject to the higher clear and convincing standard to establish he entered his marriage in good faith. The Petitioner instead argues that the Director erred by failing to consider the difficulty for a battered and abused alien to provide sufficient documentary evidence of a *bona fide* marriage but that he provided credible probative evidence. He also asserts that the Director erred in finding three letters of support were general and did not provide specific information as each is distinguishable in observations of his marital relationship. The Petitioner further maintains that the Director failed to consider the psychological assessment. Finally, the Petitioner contends that the Director erred in finding that he did not demonstrate he is a person of good moral character as the primary evidence is the self-affidavit and local police clearance that here indicated no criminal record, and that he submitted the disposition for his only arrest along with supporting statements from friends.

Because the Petitioner married C-S-M- while his removal proceedings were pending, and because the record does not indicate that he resided outside the United States for the requisite two-year period, the Petitioner is subject to the bar at section 204(g) of the Act. *See* 8 C.F.R. § 245.1(c)(8)(ii)(A) (section 204(g) of the Act applies and proceedings remain pending until the removal order is executed, and the individual departs the United States, is found not to be removable, or the proceedings are otherwise terminated). To be eligible for the *bona fide* marriage exemption under section 245(e)(3) of the Act, the Petitioner must establish his good faith entry into marriage by clear and convincing evidence.

Upon review of the entire record, we agree with the Director that the Petitioner has not established by clear and convincing evidence that he entered into marriage in good faith. The Petitioner's personal affidavit offers few details of his courtship, interactions, or routine with C-S-M- and little insight into their relationship prior to or during their marriage to support his contention that he entered the marriage in good faith. Likewise, the letters from friends make general observations with few details of witnessed events that would demonstrate the Petitioner's intentions leading into his marriage with C-S-M-. Although providing a diagnosis, the psychological evaluation offers general observations from information reported by the Petitioner but provides little detail to demonstrate his marital intentions. The limited financial documentation submitted by the Petitioner provides little evidence of the Petitioner's shared life with his spouse. The record does not support the Petitioner's assertions and on appeal he has offered no additional argument or evidence to support his claims and to address the deficiencies identified in the Director's decision. The record remains insufficient to establish that the Petitioner entered marriage in good faith.

The Director correctly determined that the Petitioner did not establish by a preponderance of the evidence a good faith marriage to C-S-M- and has not then demonstrated by clear and convincing evidence the *bona fides* of his marriage required by section 204(g) of the Act, which consequently bars approval of the VAWA petition and renders the Petitioner ineligible for immediate relative classification under section 204(a)(1)(A)(iii)(II)(cc) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

The Director further determined that the Petitioner did not demonstrate that he is a person of good moral character. As the Petitioner's inability to establish that he entered marriage 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 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.