U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19963237

Date: JULY 18, 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), and the matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Petitioners who are spouses or former spouses of a U.S. citizen may self-petition for immigrant classification under VAWA if they demonstrate, among other requirements, that they entered into the marriage with the U.S. citizen spouse in good faith. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(H). In addition, the petitioner must show that they are eligible for classification under section 201(b)(2)(A)(i) of the Act as the spouse of a U.S. citizen. Section 204(a)(1)(A)(iii)(II)(cc) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(B).

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

It is the petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. Section 291 of the Act; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 805-6 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). However, in cases where section 204(g) of the Act applies, petitioners must establish their good-faith marriage to a U.S. citizen under the higher "clear and convincing evidence" standard required under section 245(e)(3) of the Act. To satisfy their burden, petitioners may submit any credible evidence for us to consider in our review. 8 C.F.R. § 204.2(c)(2)(i). However, although we must consider any credible evidence relevant to a VAWA petition, we 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 Petitioner, a native and citizen of El Salvador, was placed into removal proceedings in [redacted] 2008. The immigration court subsequently ordered the Petitioner removed from the United States, and in June 2017, the Board of Immigration Appeals (the Board) affirmed the decision. The Petitioner submitted an Indiana marriage certificate showing that he married , L-B-,[1] a U.S. citizen spouse, in [redacted] 2017. The Petitioner and L-B- divorced in [redacted] 2019, and he filed his VAWA petition in April 2019 based on his marriage to L-B-.

The Director denied the VAWA petition, concluding that section 204(g) of the Act barred approval of the petition because the Petitioner married L-B- while in removal proceedings and he did not establish by clear and convincing evidence that he entered into the marriage in good faith as required for the *bona fide* marriage exemption to the statutory bar at section 204(g). The Director explained that the statements from the Petitioner and his friend lacked probative details of his courtship, wedding ceremony, and marital relationship with L-B- to establish his good-faith marital intentions, and that the supporting evidence was likewise insufficient to demonstrate a good-faith marriage by clear and convincing evidence. The Director therefore further determined that the Petitioner did not establish eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act.

On appeal, the Petitioner does not contest that he was married to L-B- while he was in removal proceedings or that section 204(g) of the Act therefore applies in his case. Instead, he contends that he established the *bona fide* marriage exemption under section 245(e)(3) of the Act to the statutory bar at section 204(g) by submitting clear and convincing evidence that he entered his marriage to L-B- in good faith.[2] He alleges that the Director did not correctly apply the "clear and convincing"

[1] We withhold names to protect the individuals' identities.

[2] The Petitioner does not assert, and the record does not show, that his removal proceedings had been terminated or that he is otherwise exempt from the restriction at section 204(g) of the Act because he resided outside the United States for a period of two years after his marriage to L-B-, as required. *See* sections 204(g) and 245(e)(3) of the Act (prohibiting approval of a VAWA petition where the petitioner's marriage to the U.S. citizen spouse underlying the petition occurred while the petitioner was in removal proceedings, *until* the petitioner has resided outside the United States for a two-year period after the marriage). Consequently, section 204(g) of the Act bars approval of the VAWA petition unless the Petitioner establishes that he is eligible for the *bona fide* marriage exemption by showing that he entered into marriage with L-B- in good faith by clear and convincing evidence. Section 245(e)(3) of the Act.

standard required to establish the *bona fide* marriage exemption and that he provided ample proof of his relationship with L-B-, including affidavits, a joint 2017 tax return, evidence that they had shared car and health insurance, and photographs. Moreover, the Petitioner notes that he specifically responded to concerns that the Director had raised in the request for evidence (RFE) by providing a second, more detailed personal statement, certified Internal Revenue Service (IRS) transcripts to show that he filed the 2017 tax return, and descriptions of the previously-provided photographs. The Petitioner claims that the Director's findings are unsupported by an explanation as to deficiencies in the evidence and he resubmits previously provided evidence.

A review of the entire record shows that the Director correctly applied the clear and convincing evidence and properly addressed the evidence. Although the Petitioner's personal statements before the Director provided some details of his relationship with L-B-, they largely focused on the abuse he suffered and did not provide sufficient probative evidence about his intent in marrying L-B, their courtship, details of their wedding ceremony, their personal routines after marriage, and their shared marital experiences. Similarly, as noted by the Director, the Petitioner's friends and former colleagues provided only general statements regarding the Petitioner and L-B- that did not provide insight into his good-faith marital intentions. Instead, his friends discussed interactions during which L-B- appeared to be controlling of the Petitioner. In the case of a colleague named B-T-, she stated that L-B- and the Petitioner made a good couple without further details about how she came to that conclusion. Additionally, the remaining relevant documentary evidence, including photographs of the Petitioner and L-B- on the day of their wedding ceremony and during a trip to [redacted] Florida in 2017; a 2017 federal tax return and corresponding tax transcript from the IRS; the first page of a joint bank statement; a health insurance card for the Petitioner listing L-B- as a dependent; a single joint car insurance statement; and a car insurance policy in the Petitioner's name, do not provide any substantive insight into the Petitioner's marital intentions, particularly in the absence of probative testimony from him. Accordingly, the Petitioner's evidence before the Director does not establish his good-faith marital intentions by a preponderance of the evidence, as generally required to establish VAWA eligibility. *See* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. Consequently, we find no error in the Director's determination that the Petitioner did not satisfy the higher burden he bears to show his good-faith marital intentions by clear and convincing evidence in order to establish his eligibility for the *bona fide* marriage exemption. On appeal, the Petitioner submits no additional evidence of his good-faith marital intentions.

Moreover, the Petitioner's claims regarding his relationship with L-B- are also contradicted by other evidence in his record. For example, in his initial statement, the Petitioner claimed that he and L-B- met in 2014 at their shared place of employment in Indiana, and that they began living together four months after their first date. However, in his second statement, the Petitioner claimed that he met L-B- in 2015, that he asked her to live with him after six to seven months of dating, and that they moved in together "in the late months of 2015." In addition, the Petitioner stated on the VAWA petition that he and L-B- shared a home in [redacted] Indiana from April 2017 to November 2018, and he submitted a health insurance statement issued to him at that [redacted] address and showing that he was placed on L-B-'s health plan effective January 2018. However, their [redacted] 2017 marriage certificate, a homeowner's insurance policy for the period of May 2018 to May 2019, and their car insurance statement for the period of October 2017 to April 2018 were issued to the Petitioner and L-B- at a residential address on [redacted] Street in [redacted] Indiana rather than the claimed shared marital residence in [redacted] Consequently, the Petitioner's own assertions and evidence

are internally inconsistent as to when and where he and L-B- shared a life together, both before or after their wedding ceremony, and our review of the record does not resolve the referenced inconsistencies, further undermining his assertions of his good-faith entry into marriage with L-B-.

Accordingly, as stated, the Director properly determined that: (1) the Petitioner, who married L-B- while in removal proceedings, 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 (2) consequently, section 204(g) of the Act bars approval of the VAWA petition.

III. CONCLUSION

On appeal, the Petitioner has not established by a preponderance of the evidence that he entered into marriage with L-B- in good faith. He therefore necessarily has not satisfied the higher burden of demonstrating his good-faith marital intentions by clear and convincing evidence to establish eligibility for the *bona fide* marriage exemption at section 245(e)(3) of the Act. 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.