



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

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

In Re: 20861736

Date: JUN. 3, 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 before us on appeal. The Administrative Appeals Office (AAO) reviews 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

Petitioners who are spouses of U.S. citizens may self-petition for immigrant classification if they demonstrate, among other requirements, they entered into marriage with the U.S. citizen in good faith and that, during the marriage, they were battered or subjected to extreme cruelty perpetrated by their U.S. citizen spouse. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(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 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). Clear and convincing evidence is that which, while “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).

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)(vii).

Although 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). Outside of the context of section 204(g) and 243(e) of the Act, the burden of proof is on the petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Venezuela, was issued a Notice to Appear (NTA) and placed into removal proceedings in [] 2015. She married C-M-,¹ a U.S. citizen, in [] 2017.² In September 2019, the Petitioner filed the instant VAWA petition based on this marriage. With her VAWA petition, the Petitioner submitted a personal statement, a Relationship Change Application from [] insurance statements and a letter of termination from [] Fund for her spouse, documents from the [] Police Department regarding her spouse's arrest in [] 2018, court documents and disposition records regarding her spouse's criminal history, and miscellaneous family photographs. The Director determined that the evidence was insufficient to establish that the Petitioner entered into marriage with C-M- in good faith. Specifically, the Director explained that the Petitioner's personal statement lacked probative details of her courtship and marriage. The Director noted that the bank statements listing the Petitioner and C-M- as joint account holders did not demonstrate shared financial resources or responsibilities. Additionally, the Director stressed that the insurance documents and the photographs were not sufficient evidence to establish that the Petitioner married C-M- with the intention of creating a life together.

The Director issued a request for evidence (RFE) seeking additional evidence that the Petitioner entered into marriage with C-M- in good faith. In response, the Petitioner submitted, among other things, an updated personal statement, a therapy intake report for couples counseling, third party statements, and a copy of correspondence that the Petitioner's spouse received at her home. The Director considered this evidence and denied the VAWA petition, concluding that the Petitioner did not submit sufficient evidence to establish, by a preponderance of the evidence, that she married C-M- in good faith. The Director further concluded that the Petitioner had not met her burden of establishing by clear and convincing evidence that she entered into marriage with C-M- in good faith, as required by section 204(g) and 243(e) of the Act, since the Petitioner married her spouse while in removal proceedings. The Director highlighted that the evidence, namely the updated personal statement and third party statements, were again vague, lacking in probative detail, and insufficient to establish that the Petitioner entered into her marriage with C-M- in good faith.

On appeal, the Petitioner reasserts her eligibility for the benefit sought. She contends that the Director erred in applying the higher "clear and convincing" standard to the petition, rather than the "any credible evidence" standard that is statutorily mandated. She maintains that her previously submitted

¹ Initials are used to protect the individual's privacy.

² The Petitioner and her spouse divorced in [] 2018.

evidence constitutes more than “any credible evidence” or in the alternative, “clear and convincing” evidence that she married C-M- in good faith.

As a preliminary matter, we note that the “any credible evidence” language in the statute and regulation relates to an evidentiary standard and the type of evidence that the agency shall consider, not the applicable burden and standard of proof. A VAWA petitioner bears the burden of establishing eligibility, and generally must do so by a preponderance of the evidence. *Chawathe*, 25 I&N Dec. at 375. However, in cases such as the Petitioner’s in which section 204(g) applies, the burden of proof for establishing a good faith marriage is the higher “clear and convincing evidence” standard at section 245(e) of the Act. Furthermore, while a petitioner may submit any credible evidence for us to consider to satisfy this burden, we determine, in our sole discretion, the weight given to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

Additionally, the Petitioner’s contention that her previously submitted evidence proves that she entered into marriage with C-M- in good faith is unpersuasive. The record reflects that the Director considered the personal statements from the Petitioner and third parties as well as the Relationship Change Application from [REDACTED] Bank and adequately explained why they were insufficient evidence of a good faith marriage. Specifically, the Director explained that the personal statements were vague, lacked probative value, and did not demonstrate that the Petitioner entered into marriage with C-M- in good faith and with the intention of creating a life together. Our review of the Petitioner’s statements and those of the third parties do not contain sufficient, probative details regarding the Petitioner and C-M-’s courtship, intentions in marrying, marriage ceremony, shared experiences and routines so as to establish that the Petitioner entered into the marriage in good faith. Regarding the bank statement, the Director explained that it was insufficient to establish a commingling of financial resources or sharing of financial responsibilities. Our review of the bank statements confirm, and the Petitioner does not dispute that, only her paycheck was deposited into that account. Additionally, we note that the therapy intake report reflecting one couples counseling session in August 2017, insurance documents indicating that the Petitioner’s spouse received medical treatment under her insurance policy in September 2018 and October 2018, a Request for a Temporary Protective Order stating that the Petitioner’s spouse had belongings in her house in September 2018, and a copy of correspondence addressed to the Petitioner’s spouse at her home in April 2018, January 2019, and July 2019 do not expressly speak to, and are not sufficiently probative of, her courtship, intent on getting married, or shared interest or activities with C-M-. The Petitioner’s generalized assertions on appeal, absent any additional evidence that she married C-M- in good faith with the intention of creating a life together, are not sufficient to overcome the deficiencies noted by the Director. Upon *de novo* review, we agree with the Director that the Petitioner has not established that she entered into marriage with her U.S. citizen spouse in good faith by a preponderance of the evidence. Because the Petitioner has not established that she entered into his marriage with C-M- in good faith by a preponderance of the evidence, she necessarily cannot establish the same by clear and convincing evidence, as required by 204(g) and 245(e)(3) of the Act.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director’s decision on appeal and therefore has not demonstrated her eligibility for VAWA classification.

ORDER: The appeal is dismissed.