



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

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

In Re: 19276061

Date: JUNE 14, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner, a citizen of Kenya, 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), concluding that the Petitioner did not establish that he entered into the marriage with his U.S. citizen spouse, T-H,¹ in good faith or that he was subjected to battery and/or extreme cruelty. On appeal, we determined that the record demonstrated that the Petitioner was subject to battery during his marriage; however, we dismissed the appeal concluding that he did not demonstrate that he entered into the marriage in good faith. The Petitioner has filed a motion to reopen and reconsider our decision. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, were battered or subjected to extreme cruelty perpetrated by their spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). 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)(i), (vii).

¹ Initials are used throughout this decision to protect the identities of the individuals.

II. ANALYSIS

We incorporate our prior decision by reference and will repeat only certain facts as necessary here. The record reflects that the Petitioner married T-H-, a U.S. citizen, in [] 2015. In August 2017, he filed the instant VAWA petition based on this marriage. In support of the VAWA petition, the Petitioner provided, in pertinent part, two self-affidavits, a third-party affidavit, copies of text messages from November 2016 to June 2017, a transcript of messages from a messaging app from December 2018 to March 2019, copies of utility bills in the Petitioner's name, and a collection notice related to cable service addressed to the Petitioner and T-H-.

On appeal, the Petitioner asserted that he met his burden to establish a good faith marriage and claimed that the Director failed to consider the difficulty of obtaining documents to establish the bona fides of his relationship because of the imbalance of power in the couple's home. The Petitioner also asserted that the documentation relating to couple's communications via text messages and the messaging app is indicative of a bona fide marriage.

In our review of the appeal, we considered the Petitioner's affidavits in which he recounted meeting T-H- online in August 2014; communicating with T-H- several times a week via emails, texts, and phone calls; moving in together in October 2014; discussing marriage in December 2014; marrying at a courthouse in [] 2015; and honeymooning in [] two months after the marriage. In our decision dismissing the appeal, we determined that the Petitioner's affidavits did not provide sufficient probative details of their engagement, the wedding ceremony, participants, post ceremony celebration, or their marital dynamics and routines, other than the claimed abuse. We also acknowledged that USCIS can consider the conduct of the parties after marriage in making a good faith determination; however, we noted that it is relevant only to the extent that it bears upon their subjective state of mind at the time of marriage.² In addition, we took notice of and considered the Petitioner's claimed difficulty in obtaining documents from T-H-; however, we determined that neither the Petitioner's personal statements, nor the documentary evidence submitted in support of his petition, provided persuasive or detailed evidence of his intentions at the time of the marriage to establish that his marriage was entered into in good faith.

On motion, the Petitioner contends that he has provided all relevant documents in his possession and states that the VAWA evidentiary standard requires that any credible evidence relevant to a self-petition should be considered when primary evidence is unavailable. He further contends that the previously submitted documentation, particularly the records regarding the couple's shared cable service account and other billing accounts, demonstrate that their marriage was bona fide. He maintains that although the cable service account is the couple's only shared billing account, the other bills still show proof of a bona fide marriage because he has been the sole provider for most of the marriage, and as sole provider, his name is the only one that appears on household bills. He also claims that the text messages and the affidavit from his friend provide a glimpse into his relationship with T-H- prior to the marriage.

² *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Bark v. Immigration and Naturalization Service*, 511 F.2d 1200, 1202 (9th Cir. 1975); *Matter of McKee*, 17 I&N Dec. 332, 334-35 (BIA 1980); *Lutwak v. United States*, 344 U.S. 604 (1953).

As an initial matter, we note here that although the Petitioner is correct that we must consider any credible evidence relevant to a 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). Here, the Petitioner has not submitted an updated personal statement or other additional evidence on motion, and as explained in our prior decision, his personal statements lack probative details about his intent in marrying T-H-, their courtship, details of their wedding ceremony, their personal routines after marriage, or their shared marital experiences. Further, the previously submitted third-party affidavit only provides a general description of the Petitioner's relationship with T-H-, and thus, does not provide further insight into the Petitioner's state of mind at the time of marriage or contain specific, probative details regarding his experiences with the Petitioner and T-H-. Specifically, T-M-, a friend of the Petitioner stated:

I have known him for over seven years, and we met in college where we were roommates. He is a very good friend of mine . . . Back in 2014 [the Petitioner] informed me that he had met T-H- and he told me he was very much in love and was going to marry her, he was very happy, and I was happy for him . . . He married her a year a later and things were good with them.

In addition, while the Petition submitted copies of text messages, the messages are dated more than one year after the marriage occurred, and therefore do not provide evidence of the Petitioner's intentions at the time of the marriage. Further, aside from the previously submitted collection notice addressed to the couple, the record does not contain evidence of jointly held accounts or other documentation establishing his intentions at the time of the marriage or that his marriage was entered into in good faith

Based on the foregoing, the Petitioner has not overcome our prior decision dismissing his appeal of the Director's denial. As the Petitioner has not submitted new evidence sufficient to establish a good faith marriage, he has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. Therefore, he has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.