U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20916615

Date: JUNE 16, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident (VAWA petition), concluding that the Petitioner did not overcome the marriage fraud bar of section 204(c) of the Act, and did not establish that she married her current lawful permanent resident spouse in good faith or resided with him, as required. The Director also denied a subsequent motion to reopen and reconsider, affirming her determination that section 204(c) of the Act barred the petition's approval. 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 or former spouse of a lawful permanent resident may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with their lawful permanent resident spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii) of the Act. Among other things, a petitioner must establish that they have resided with the abusive spouse. Section 204(a)(1)(B)(ii)(II)(dd) of the Act. However, section 204(c) of the Act, 8 U.S.C. §1154(c), prohibits the approval of any petition if the foreign national:

> has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary of Homeland Security] has determined that the [foreign national] has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

> *Fraudulent marriage prohibition*. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

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). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) determines, 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).

II. ANALYSIS

In this case, the Petitioner has been married three times. The VAWA petition alleges that her third husband, M-H-,[1] subjected her to battery or extreme cruelty. The Director issued a Notice of Intent to Deny (NOID) the petition, finding, in part, that the Petitioner entered into her first marriage to S-H- for the purpose of evading immigration laws. The Director discussed a statement from S-H-, who had filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf, which claimed he married the Petitioner for $3,500 in order to give her permanent resident status and received $1,000 of that amount. The statement specified that they never stayed in the same bedroom, never consummated the marriage, and that at the time, the Petitioner was the house cleaner. The Petitioner responded to the NOID with additional evidence, including a new declaration and letters from her sons.

The Director denied the VAWA petition. She summarized the Petitioner's declaration that was submitted in response to the NOID and found that there were inconsistencies in the Petitioner's statements, such as the timeline of S-H-'s purported wedding proposal. The Director further found, among other things, that the Petitioner's declaration lacked probative details regarding the couple's courtship, mutual interests, wedding ceremony, or memorable experiences during their marriage. The Director concluded that the Petitioner's marriage to S-H- was entered into for the purpose of evading immigration laws and, therefore, the petition was deniable under section 204(c) of the Act. The Director further concluded that the Petitioner did not demonstrate she married her current spouse, M-H-, in good faith or resided with him, as required.

The Petitioner filed a motion to reopen and reconsider, arguing that her marriage to S-H- was bona fide and that the Director erred in making a 204(c) marriage fraud finding. The Director denied the motion, upholding the determination that the record contains substantial and probative evidence of prior marriage fraud.

[1] We use initials to protect the identities of the individuals in this case.

On appeal, the Petitioner, through counsel, submits a brief and additional evidence, including a new sworn statement from the Petitioner and statements from her sons and other third parties. Counsel argues, in part, that USCIS should have deemed the derogatory letter from S-H- to be unreliable considering he had an affair and the Petitioner "is an immigrant who at that time had very little income, no assets, no savings or investments of any kind, and who also still had two children she was financially responsible for," and, therefore, would not have been able to pay S-H- anything. Counsel contends S-H-'s allegations are "outrageous" and that USCIS "appears prejudiced by the tainted evidence provided to the government by a vindictive and divisive ex-spouse. . . ." She maintains that USCIS failed to give any weight to the Petitioner's additional declarations which, according to counsel, "inadvertently stated that [the Petitioner] and [S-H-] married at the end of 2001," describing "[t]his [as] a minor oversight . . . [that] should have been deemed human error" and "a simple mistake." Regarding S-H-'s wedding proposal, counsel contends that the Petitioner:

> did not state if the proposal took place in Mexico or while she was in Mexico or in the U.S. . . . [The Petitioner] actually did not provide the details of when or where [he] proposed only how he proposed and where they got married. Moreover, people get engaged all the time from great distances so [S-H-] could have easily proposed to [the Petitioner] via phone or on one of his visits to Mexico. . . . USCIS's logic here is lacking.

Counsel argues that USCIS "latched onto engineered inconsistencies in its never-ending attempt to find truth in the inherently unreliable letter" from S-H- and "should have clearly and explicitly stated the exact detail required to cure the adverse determination defect claimed."

After a careful review of the entire record, including the new evidence submitted on appeal, we agree with the Director that the petition is barred from approval under section 204(c) of the Act. As noted above, it is the Petitioner who bears the burden of establishing eligibility for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. There is no evidence USCIS was prejudiced against the Petitioner in considering S-H-'s signed statement, as claimed. Although counsel contends that the Petitioner mistakenly and inadvertently stated that the couple married at the end of 2001, when, in fact, they married in [redacted] 2001, the Petitioner, who submitted a new declaration on appeal, does not make this assertion. The unsupported assertions of counsel do not constitute evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988). Even assuming this inconsistency was merely a typographical error, the Petitioner's new declaration continues to lack probative, specific details regarding her marital intentions, the couple's wedding ceremony, or shared, memorable experiences to demonstrate their bona fide marriage. As counsel concedes, the Petitioner's statements do not provide details regarding S-H-'s purported wedding proposal.[2] Letters from third parties submitted on appeal are brief and do not address the couple's marital intentions or provide probative details describing their courtship, relationship, or shared experiences.[3] Considering the record in its entirety,

[2] In her new declaration submitted on appeal, the Petitioner stated only, "One day in December 2000, when we were exercising and running around the park, he proposed to me and told me he wanted us to get married. He gave me this beautiful necklace and I was so happy. . . ."

[3] For instance, the letter from S-C-, the most descriptive of the third-party letters, briefly states that the Petitioner and S-H-

we find that the record contains substantial and probative evidence that the Petitioner entered into marriage with S-H-, a U.S. citizen, for the purpose of evading immigration laws. Accordingly, the VAWA petition is barred from approval under section 204(c) of the Act.[4]

ORDER: The appeal is dismissed.

"were renting a room living together as husband and wife," and did "things together like cooking, watching movies, cleaning the house, doing normal domestic duties like husband and wife would do." A letter from R-J- states that she has known the Petitioner since 2000 and "know that she married [S-H-] in [redacted] 2001 or about. They both came to live here in the city of [redacted] California." A letter from the Petitioner's son states, "My memory of [S-H-] is very foggy. I'm sure I met him several times and spent some time together," and a letter from her other son states, "I only saw [him] for 2/3 weeks and I didn't see him after that."

[4] Although the Director also concluded that the Petitioner did not establish that she married M-H- in good faith or resided with him, we need not reach these additional issues and, therefore, reserve them. Our reservation of these issues is not a stipulation that the Petitioner overcame these alternate grounds of denial and should not be construed as such. Rather, there is no constructive purpose to addressing them because they cannot change the outcome of the appeal. *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).