U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17719474

Date: JUN. 22, 2022

Motion on Administrative Appeals Office 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 Petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (VAWA petition), based on her marriage to K-S-,[1] a U.S. citizen. The Director of the Vermont Service Center denied the VAWA petition. The Petitioner then appealed the matter to us. We denied this appeal, as well as the Petitioner's subsequently filed motion to reopen and reconsider. The Petitioner then filed a second motion to reconsider with us, which we also denied. The Petitioner now files a third motion to reconsider our previous decision, submits a supporting brief, and contends that we erred in dismissing her previous motion to reconsider. Upon review, we will dismiss this motion to reconsider.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The Petitioner has not overcome our prior determinations on motion.

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 the U. S. 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, a petitioner 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 is 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 self-petition must demonstrate that the self-petitioner did not enter into the marriage to the abusive spouse "for the primary purpose of circumventing immigration laws." 8 C.F.R § 204.2(c)(1)(ix). Evidence of a good-faith marriage may include documents showing the spouses listed each other on insurance policies, leases, tax forms, or bank accounts; evidence regarding their

[1] Names withheld to protect identities of individuals.

courtship, wedding ceremony, shared residence and experiences; birth certificates of any children born to the petitioner and his or her spouse; police reports, medical records, or court documents; affidavits from individuals with personal knowledge of the relationship; and other credible evidence. 8 C.F.R. § 204.2(c)(2)(vii).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

In July 2016, the Petitioner filed a VAWA petition based upon her [redacted] 2011 marriage to K-S-, a U.S. citizen, whom she divorced in [redacted] 2016. The Director denied this VAWA petition, concluding that the Petitioner had not established that she resided with K-S-, that she entered into her marriage with K-S- in good faith, and that she was subjected to battery or extreme cruelty perpetrated by him. The Director's decision also noted that the administrative record contained a previously submitted Form I-751, Petition to Remove the Conditions on Residence, incorporated here by reference, based on the Petitioner's marriage to K-S-, which was denied due to a determination that their "marriage [was] not bona fide and was merely entered into to . . . obtain permanent residence." The Director noted that the Petitioner and K-S- failed to disclose during the January 2015 interview that they were separated at that time and found this to be a willful misrepresentation and concealment of material fact. Further, the Director found that the Petitioner did not disclose her two U.S. citizen children by I-E-, born in 2013 and 2014, on the Form I-751 or during the related interview.

The Petitioner then appealed the Director's decision to us, arguing that the Director had not properly considered the evidence submitted with her VAWA petition. In our decision dismissing the Petitioner's appeal, incorporated here by reference, we found that the Director properly considered all of the evidence in the record. We also concluded that the record, as supplemented on appeal by the Petitioner's updated personal statement and statements of her friends, was not sufficient to overcome the Director's findings, including that she had not established her good faith marital intentions and joint residence with K-S-.[2] Specifically, we determined that the statements provided on appeal did not contain detailed probative discussions of her relationship with K-S- and that the Petitioner had not sufficiently addressed the fraud findings of the Form I-751 investigation.

The Petitioner then filed a motion to reopen and to reconsider our decision with us, submitting a supplemental statement regarding her relationship with K-S- and contending that we erred in our prior decision. In our 2020 decision dismissing her combined motion to reopen and reconsider, we determined that, like her previous statements, her supplemental statement also lacked detailed probative information sufficient to establish her good faith marriage to K-S- and joint residence with

[2] On appeal, we also concluded that the Petitioner had not overcome the Director's finding that she had not established that K-S- had subjected her to battery or extreme violence, as required to establish eligibility for VAWA immigrant classification.

him. Additionally, we noted that she had again failed to address the significant inconsistencies in the record that contradict her assertions of good faith marital intentions.[3] Specifically, our decision advised that the record before us indicated that the Petitioner appeared with K-S- at her joint Form I-751 interview in January 2015 and falsely maintained under oath that she was still residing with her spouse at the claimed marital residence and that she had no children. We noted that it was only after a USCIS investigation was conducted and in a response to a notice of intent to deny (NOID) this Form I-751 that the Petitioner disclosed that K-S- and she had already been separated for several years since March 2012 and that she had entered into a relationship that same month with another individual, I-E-, with whom she had two children during the period she testified she was still residing with K-S-.[4] We noted that neither the Petitioner's NOID statement in her Form I-751 proceedings nor her statements below and before us in these VAWA proceedings addressed her false statements made under oath in January 2015 regarding the viability of her marriage and her claimed residence with K-S-, when she had not been in a viable relationship with K-S- for nearly three years. Accordingly, we concluded that the Petitioner's statements and supporting letters in the record were not sufficient to overcome the evidence of her misrepresentations under oath regarding her marriage to K-S- and to establish her good faith marital intentions.[5]

The Petitioner next filed a second motion to reconsider, asserting that our previous decision was incorrect and that she has demonstrated her good faith marriage to and joint residence with K-S- as required. We subsequently dismissed this motion to reconsider on the ground that it did not meet the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

The Petitioner now files a third motion to reconsider our prior decision. In the instant motion to reconsider, the Petitioner contends that in dismissing her combined motion, we erroneously concluded that her misrepresentation regarding her joint residence with K-S- at her Form I-751 interview was proof that they never resided together and that her marriage to K-S- was a sham. The Petitioner misconstrues our previous determination. As noted above, in our 2020 motion decision, we determined that, separate from her misrepresentations, the Petitioner's supplemental statement on motion and the letters of support in the record below lacked probative information and therefore did not satisfy her burden to establish her joint residence and good faith intentions in marrying K-S-. However, the Petitioner's misrepresentations under oath regarding her marriage and joint residence with K-S- at her Form I-751 interview further undermined the credibility of her assertions in these proceedings that she resided with and entered into good faith marriage with him, particularly in the absence of probative testimony and evidence. *See* section 204(a)(1)(J) of the Act;

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[3] We incorporate this decision by reference.

[4] The Petitioner indicated on motion that she and I-E- now have three children together.

[5] We declined to reach and reserved the Petitioner's arguments on motion regarding her claim of battery and extreme cruelty by K-S-, as our determinations as to claims of her joint residence with and of her good faith marriage to K-S- were dispositive of the combined motion. *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). However, although we did not further reach the issue, our prior decision on the Petitioner's combined motion also noted that the Petitioner's false statements under oath appeared to bar her from establishing her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. *See also* 8 C.F.R. § 204.2(c)(1)(vii) (VAWA petitioners will be found to lack good moral character if found to be a person described in section 101(f) of the Act, 8 U.S.C § 1101(f), which includes individuals who have given false testimony for the purposes of obtaining any benefits under the Act).

8 C.F.R. § 204.2(c)(2)(i) (providing that the definition of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS.) Therefore, we find no error with our prior analysis.

Citing *Matter of McKee*, 17 I&N Dec. 232 (BIA 1980), the Petitioner also attempts to shift the burden of proof in these proceeding to USCIS, asserting that in order to "break the McKee rule," USCIS must show that she and K-S- never resided together and that the burden lies with USCIS to establish that her marriage to K-S- was a sham. However, as discussed above, it is the Petitioner who bears the burden in these proceedings to demonstrate eligibility by a preponderance of the evidence, including that she entered into marriage with her U.S. citizens spouse in good faith and resided with him, which she has not shown. *Matter of Chawathe*, 25 I&N Dec. at 375. Further, in *Matter of McKee* the Board of Immigration Appeals (Board) found, in relevant part, that a Form I-130, Petition for Alien Relative, petition filed by a U.S. citizen on behalf of a nonimmigrant spouse should not be denied solely because the two parties are not residing together where the parties entered into a valid marriage and there is nothing to show that they have since obtained a legal separation or dissolution of the marriage. The Board, however, also specifically noted that the parties' separation is a "relevant factor" in assessing marital intent, i.e. whether the marriage was a sham. Consequently, the Petitioner's separation from K-S- and her false statements to USCIS that she was in a viable marriage and residing with him are relevant factors that we consider in determining her good faith marital intentions in this case.

Finally, the Petitioner asserts that we erred in our prior determination that her misrepresentations regarding her marriage and joint residence with K-S- in her Form I-751 proceedings were material to that requested relief. However, the record reflects that the Petitioner filed a joint Form I-751 with her U.S. citizen spouse under section 216(c)(1) of the Act to remove the conditions on her conditional lawful permanent residence status, which she obtained based on her marriage to K-S-. Section 216(c)(1) of the Act requires that the joint petition include a statement, under penalty of perjury, of the facts described at section 216(d)(1), including that the qualifying marriage was not entered into for the purpose of procuring lawful admission to the United States, as well as that the couple appear at a personal interview regarding those facts. *See* Section 216(c)(1) of the Act; *see also* section 216(d)(1) of the Act. Accordingly, the Petitioner's misrepresentations regarding her marriage and residence with K-S- made during her joint Form I-751 proceedings were material to that requested relief and are relevant considerations in these proceedings in assessing her good faith marital intentions.

For the above stated reasons, the Petitioner has not established on her motion to reconsider that our decision was based on an incorrect application of the law or USCIS policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). She therefore has not overcome our previous determination that she had not established eligibility for VAWA immigrant classification.

ORDER: The motion to reconsider is dismissed.