



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

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

In Re: 20133931

Date: MAY 24, 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 Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). We dismissed the Petitioner's appeal and a subsequent motion to reopen and reconsider. The matter is now before us again on a motion to reopen and reconsider.¹ Upon review, we will dismiss the motions.

I. LAW

Petitioners who are spouses of U.S. citizens may self-petition for immigrant classification if they demonstrate that, 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

¹ The Petitioner's attorney indicated in his cover letter that he would submit a brief and/or additional evidence to our office within 30 days. However, neither was received.

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).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other 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. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

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 that USCIS gives such evidence lies within USCIS' sole discretion. 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 a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner, a native and citizen of India, entered the United States without admission or parole in [REDACTED] 2012. He was issued a Notice to Appear (NTA) and placed into removal proceedings in [REDACTED] 2012. He married his U.S. citizen spouse, J-L-,² in [REDACTED] 2016. He filed the instant VAWA petition in March 2017 based on a claim of battery and extreme cruelty by J-L-.

In our prior decision on appeal, incorporated here by reference, we concurred with the Director's determination that the Petitioner had not established by a preponderance of the evidence that he married J-L- in good faith. We explained that the Petitioner's personal statement lacked probative details about his intent in marrying J-L-, their courtship, details of their wedding ceremony, their personal routines after marriage, and their shared marital experiences, and that letters from the Petitioner's friends provided limited insight into his state of mind at the time of marriage and did not contain specific, probative details regarding their experiences with the Petitioner and J-L-. In addition, we determined that, although the Petitioner had provided some documentary evidence in support of his claim of a good faith marriage, it was insufficient given the deficiencies in his personal statement. We concluded that the Director was correct in determining that the Petitioner had not established his good faith marriage to J-L- by a preponderance of the evidence, and that for this reason, he likewise had not made this showing by the higher, clear and convincing evidence standard required by section 245(e)(3) of the Act because he was in removal proceedings when he married J-L-, such that section 204(g) of the Act barred approval of his VAWA petition.

In our prior decision on first motion, likewise, incorporated here by reference, we acknowledged the newly submitted affidavits from two of the Petitioner's friends describing the difficulties the Petitioner experienced with J-L-. However, we noted that all of the affidavits in the record, including those submitted on appeal, provided limited insight into the Petitioner's state of mind at the time of marriage

² Initials are used to protect the individual's privacy.

and lacked specific, probative details regarding their experiences with the Petitioner and J-L-. We also acknowledged the Petitioner's assertion that we gave inadequate weight to joint bank statements, gas bills, and photographs, and erroneously dismissed the affidavits from his friends as insufficiently probative. While we afforded this evidence some evidentiary weight, we determined that it was inadequate to establish the Petitioner's good faith marriage given the deficiencies in his personal statement. We then concluded that the Petitioner had not addressed the deficiencies on motion, and as a result, the documentary evidence remained insufficient to meet his burden that he entered into marriage with J-L- in good faith by a preponderance of the evidence. Finally, we acknowledged the Petitioner's repeated assertion that we erred in applying the "clear and convincing evidence" standard to his petition, rather than the "any credible" standard. However, we clarified that the "any credible evidence" language in section 204(a)(1)(J) of the Act related to an evidentiary standard, as opposed to the "clear and convincing evidence" standard of proof articulated at sections 240(g) and 243(e) of the Act, and that the "clear and convincing evidence" standard of proof applied in his case because he married J-L-while in removal proceedings.

The Petitioner submits no additional evidence on second motion. Instead, he argues that we erred in affirming the Director's decision to deny his VAWA petition as the evidence he submitted represents "clear and convincing" evidence. However, he does not further articulate why that the decision was incorrect based on the evidence in the record of proceedings at the time or otherwise address the deficiencies articulated in our decisions on appeal and motion. The Petitioner further argues that the Director "incorrectly disregarded submitted affidavits as being 'not . . . probative for [their] purposes,' despite having requested the affidavits as primary evidence in its [r]equest for [e]vidence." As noted above, however, the record reflects that both we and the Director considered the Petitioner's evidence including his personal statement, affidavits from friends, bank statements, utility bills, and photographs, and explained why that evidence was insufficient to meet his burden of proof for establishing a good faith marriage by a preponderance of the evidence. We further explained that, based on this determination, the Petitioner necessarily could not meet the higher standard of proof establishing the same by clear and convincing evidence. We have reviewed the Petitioner's previously submitted evidence and his arguments on second motion, and conclude they are insufficient to overcome the discrepancies in the record and do not meaningfully respond to our dismissal determinations. Most notably, the Petitioner does not address our prior determination that the affidavits provided limited insight into the Petitioner's state of mind at the time of his marriage or contain probative details of his marriage, apart from the abuse.

III. CONCLUSION

The Petitioner has not demonstrated, by a preponderance of the evidence, that he married his U.S. citizen spouse in good faith, as he has not established legal error in our prior decision and has not provided new facts on motion to establish that he meets this requirement. He has likewise not demonstrated his good faith marriage by the higher, clear and convincing evidence standard required under section 204(g) and 243(e) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.