U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19288101

Date: MAY 25, 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), concluding that the Petitioner did not establish he entered into the marriage with his U.S. citizen spouse in good faith. The matter is now before us on appeal. On appeal, the Petitioner submits a statement and asserts his eligibility.

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

A VAWA petitioner who is the spouse or ex-spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States 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, petitioners 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 are 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).

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).

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 record reflects that the Petitioner, a native and citizen of Nigeria, was issued a Form I-862, Notice to Appear (NTA), placing him in removal proceedings in [redacted] 1999 and he was ordered removed by an Immigration Judge in [redacted] 2001. The Petitioner appealed the decision and the Board of Immigration Appeals (BIA) rendered its decision in October 2002, affirming the Immigration Judge's order. The Petitioner then married H-O-,[1] a U.S. citizen, in [redacted] 2011 and filed the instant VAWA petition based on this marriage in October 2017.

The Director denied the petition, determining that the Petitioner had not demonstrated that he entered into the marriage with H-O- in good faith. The Director explained that the three lease agreements listing the Petitioner and his spouse as tenants were not sufficient to demonstrate that both parties shared the financial obligations that accompany a lease; there was no evidence that the personal copy of the 2013 joint tax filing was filed with the proper authorities; the Petitioner's self-affidavit alone, without further evidence to support his intent when entering the marriage, did not meet the requisite standard and burden of proof; and the supporting affidavit from L-E- did not contain probative details to support that she had insight into the dynamics of the Petitioner's relationship to support his claim of entering the marriage in good faith. The Director also noted a discrepancy in the physical address listed on the 2013 joint tax filing and his spouse's 2013 W-2, Wage and Tax Statement, based on additional evidence submitted indicating that they did not move to that address until August 2014. The Director highlighted that the Petitioner was provided an opportunity to address and explain this inconsistency through a Request for Evidence (RFE), but did not do so.

Upon *de novo* review, we adopt and affirm the Director's decision with the comments below. *See e.g.*, *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting and affirming the decision below (in whole or in part, when [the Board is] in agreement with the reasoning and result of that

[1] We use initials to protect the privacy of individuals.

decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Petitioner states that his petition was denied in error, resubmits evidence already in the record, and addresses the Director's decision in a statement as follows:

> Petition was denied in error. Some of the facts stated for denying the Petition are incorrect. The enclosed Apt. Lease Agreements in 2012, 2014 & 2016 are from two separate companies. They were signed by both the Applicant and the wife. There's consistency in the signatures, especially the wife's, [H-O-].
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> The decision mentioned on page 2, paragraph 4, that there is no evidence that the 2013 tax return was filed with the Internal Revenue Services (IRS). But the evidence of the filing with the IRS is right there on the front page of the previously submitted [IRS] Form 1040X[, Amended U.S. Individual Income Tax Return (Form 1040X)]. The evidence is the IRS stamp that the document was received on Dec. 04, 2015.

While we acknowledge the arguments made by the Petitioner on appeal, they are not sufficient to establish that he entered into the marriage with H-O- in good faith. First, neither the lease agreements themselves nor the signatures are in question. However, we note that one lease agreement is signed by H-O- in her maiden name in June 2012, the second is signed by H-O- in her married name in August 2014, and the third is only signed by the Petitioner in August 2016, though H-O-'s name is listed as a resident. At issue is the lack of evidence that both parties shared the financial obligations that accompany a lease, which the Petitioner has not addressed on appeal. Second, the Petitioner contends that the 2013 jointly filed Internal Revenue Service (IRS) Form 1040X was properly filed as evidenced by a stamp acknowledging receipt by the IRS in December 2015. However, this form is used to file corrections to a previously filed tax return, which the Petitioner has not submitted evidence of filing with the IRS. Further, upon careful review of the Form 1040X, it appears that H-O-'s signature is not consistent with the signatures found on the lease agreements in the record. In sum, we see no error in the Director's determination that the evidence provided merited limited weight; rather, we agree that the record lacks specific, probative details to establish by a preponderance of the evidence that the Petitioner entered into his marriage with H-O- in good faith and not for the primary purpose of circumventing the immigration laws, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Because the Petitioner has not established that he entered into his marriage with H-O- is good faith by a preponderance of the evidence, he 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 his eligibility for VAWA classification.

ORDER: The appeal is dismissed.