



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

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

In Re: 17007631

Date: MAY 26, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Petitioners who are spouses of U.S. citizens may self-petition for immigrant classification if they demonstrate 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 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). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

However, 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 resided outside the United States for a period of two years after the date of marriage or 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 “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).

In cases where section 204(g) of the Act applies, the burden of proof relating to establishing a good faith marriage is the higher “clear and convincing evidence” standard at section 245(e)(3) of the Act. To satisfy this burden, the petitioner may submit any credible evidence for us to consider in our review,

and we will determine, in our sole discretion, the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, entered the United States in April 2008 without inspection. In [REDACTED] 2017 he married a U.S. citizen, M-L-P-,¹ with whom he claims to have lived from October 2013 to December 2014 and from September 2017 to July 2018. He filed his VAWA petition in April 2019. The couple divorced in [REDACTED] 2020. The record reflects that in [REDACTED] 2017 the Petitioner was issued a Form I-862, Notice to Appear, placing him removal proceedings for being present in the United States without admission or parole. With the petition and in response to the Director's request of evidence (RFE), the Petitioner submitted personal affidavits, letters from third parties, financial records, Facebook page printouts, photographs, and civil documents. The Director denied the petition, finding that the Petitioner did not establish he entered the marriage in good faith. On appeal the Petitioner submits a brief along with an updated affidavit, a statement from his mother, a court record showing his 2017 conviction for driving with an open container, a court record showing M-L-P-'s 2017 theft conviction, and the couple's [REDACTED] 2020 dissolution of marriage.

The Director determined that the petition was deniable under section 204(g) of the Act because the Petitioner married his spouse while he was in removal proceedings, the record did not indicate that he had spent two years outside of the United States since the marriage or that removal proceedings had been terminated, and the Petitioner did not establish by clear and convincing evidence that he entered the marriage in good faith, as provided by section 245(e) of the Act. In the RFE the Director identified deficiencies in the record, including that statements from the Petitioner's sister-in-law and mother-in-law lacked specific details, that the mother-in-law's statement was inconsistent with the Form I-360 about when the Petitioner moved in with his spouse in Minnesota and when he left to work in Texas, and that there were differences between the Petitioner's Form I-130 and Form I-360 about where he was living during the marital relationship. The Director further found that a joint electric bill and a document indicating eligibility for insurance were insufficient to show shared financial responsibility and that a Boost Mobile plan only had a handwritten note stating that the plan was shared by the Petitioner and was of limited evidentiary weight to demonstrate commingling of resources. The Director also found the Petitioner's personal statement was insufficiently detailed and provided limited insight into common interests and interaction with his spouse.

The Director concluded that in response to the RFE, the Petitioner submitted evidence, including an identity document issued by the Mexican consulate and a child support notification, sufficient to meet the preponderance of evidence standard for good faith marriage. However, citing *Matter of Carrubba*, the Director determined that the Petitioner did not demonstrate by clear and convincing evidence that he entered the marriage in good faith. The Director acknowledged the Petitioner's explanation that he and M-L-P- separated in 2014 when she decided to abort her pregnancy, that they later got back together, and that he did not have much evidence because he traveled for work and his spouse handled documents. The Director concluded that although there was some evidence of good faith marriage, it was not sufficient to demonstrate that the Petitioner entered the marriage in good faith and not to circumvent immigration laws, and denied the petition under section 204(g) of the Act.

¹ We use initials to protect individual identities.

On appeal the Petitioner does not contest the Director's determination that he must meet the higher standard of clear and convincing evidence but cites legal decisions and refers to submitted evidence to argue that he has met that standard. The Petitioner argues through counsel that the totality of circumstances shows he entered marriage with M-L-P- for the purpose of establishing a life together as they formed a family unit, lived together, and planned a future. He maintains that M-L-P-'s pregnancy, his role with her children, and the fact that they lived together show a real relationship. The Petitioner explains that he twice lived with M-L-P- and asserts that evidence of their time together and their separation due to her abuse supports a *bona fide* marriage. He contends that VAWA applicants are not likely to have access to a range of documents, that he worked while M-L-P- handled household documents, and that he presented enough evidence to meet the clear and convincing standard.

In affidavits below the Petitioner asserted that he was physically and emotionally abused by M-L-P-, whom he described as having bipolar disorder and panic attacks and as being addicted to cocaine. He maintained that she destroyed his clothing, cut him with a knife, demanded money, and threatened to call immigration authorities. The Petitioner explained that he lived with M-L-P- from October 2013 to December 2014, then broke up with her after she aborted a pregnancy, but he later forgave her when she said she wanted to marry and have a family with him, and they lived together again from September 2017 to July 2018. In his affidavit submitted on appeal, the Petitioner states that he first met M-L-P- at a 2013 Mexican Independence Day party, discovered their similarities in religion and culture, and got along well with her family. He contends that M-L-P- could not work due to her bipolar disorder so he supported her, that he loved M-L-P-'s children, and that the couple had dreams to buy a house and have children together, but she spiraled out of control.

A December 2017 statement from the Petitioner's mother-in-law indicated that the Petitioner came to live with M-L-P- in 2014 and then left to work in Texas but always came back to family gatherings. She described M-L-P- and the Petitioner as having a loving relationship and going together to different places including school functions. A December 2017 statement from M-L-P-'s sister states she met the Petitioner in September 2013, that he visited on weekends and attended family gatherings, and that he helped with M-L-P-'s daughters. A text from another individual stated that she once saw the Petitioner flee through a window with a woman hitting him. The letter from the Petitioner's mother submitted on appeal briefly states that the Petitioner was doing his best to have a better home, but his spouse was very aggressive, so he suffered anguish.

Evidence in the record does not demonstrate by clear and convincing evidence that the Petitioner entered marriage in good faith. The Petitioner's affidavits and third-party statements submitted below are vague, offering only general observations, presenting few details, and providing little insight into development of the relationship between the Petitioner and M-L-P- or of his intentions upon entering the marriage, and do not indicate a timeline of the relationship leading up to marriage. Although the Petitioner supplements his affidavits below with more detail on appeal, including referencing his first meeting of M-L-P- and recognizing their commonalities, the additional information is not sufficient to overcome deficiencies and demonstrate by clear and convincing evidence that he entered the marriage in good faith.

The record indicates that the couple began residing together in Minnesota in 2013, separated in December 2014, and got back together some time in 2017. The Petitioner stated that he traveled for work and M-L-P-'s mother indicated he went to work in Texas, although the Petitioner's only specific mention of Texas is stating that he was convicted there in 2017 for driving under the influence of alcohol. He stated that he has a close connection with his child from a previous relationship and indicated on Form I-130 and on Form I-360 that he has a daughter born in [] 2016, which the record suggests was while he was living and working in Texas. The notice of legal action against the Petitioner for child support was issued by the Texas attorney general's office in December 2017. The March 2017 State of Texas complaint against the Petitioner which resulted in his conviction for driving with an open container shows that he reported to a police officer he was on his way to visit his wife in [] Texas, at the time he was involved in a minor traffic accident. A Form I-213, Record of Deportable/Inadmissible Alien, dated May 2017, indicates that the Petitioner told an immigration officer that he was married to a Mexican citizen and had two minor children born in the United States living with their mother, and provided the name of an individual identified as his spouse.

The Petitioner does not explain how he reunited with M-L-P- after the 2014 break up and what led to the reconciliation in 2017 other than stating that she told him she wanted to marry. Evidence in the record is unclear as to a timeline of their relationship, and the Petitioner does not indicate that he and M-L-P- maintained a relationship or remained in contact after separating. The record indicates that he left Minnesota in late 2014 and suggests he then had another relationship and a child in Texas before returning to Minnesota only after he was placed in removal proceedings in [] 2017.

As the Petitioner entered into his marriage while in immigration removal proceedings, he must establish by clear and convincing evidence that he entered into marriage with M-L-P- in good faith. He has not demonstrated that the record is sufficient to establish he met this burden.

ORDER: The appeal is dismissed.