U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19697922

Date: MAY 31, 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), and the matter is before us on appeal. Upon de novo review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if he demonstrates, among other requirements, that he entered into the marriage with the U.S. citizen spouse in good faith and was battered or subjected to extreme cruelty perpetrated by the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(I) of the Act.

The Act bars approval of a VAWA petition if, while in removal proceedings, the petitioner entered into the marriage giving rise to the petition, unless the petitioner has 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. *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).

Acknowledging the limitations placed on petitioners in abusive relationships, evidence that the marriage was entered into in good faith may include, but is not limited to: shared insurance policies, property leases, income tax forms, or bank accounts; testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together; birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; or affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any credible evidence relevant to the VAWA petition in order to establish

eligibility. 8 C.F.R. § 204.2(c)(2)(i). We determine, in our sole discretion, the credibility of and weight given to all of the evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The record reflects that the Petitioner was served with a Form I-862, Notice to Appear, and placed in removal proceedings before an Immigration Judge in [redacted] 2013. The Petitioner appeared for multiple hearings, and the Immigration Judge ordered him removed to his home country of India in [redacted] 2016. The Petitioner appealed this decision, and his appeal was dismissed by the Board of Immigration Appeals in October 2017. He married G-S-[1], a U.S. citizen, in [redacted] 2018, and filed the instant VAWA petition in August 2019.

The Director denied the petition, determining that, because the Petitioner married G-S- while his removal proceedings remained pending, and because the record did not indicate that he resided outside of the United States for the requisite two-year period, he was subject to the bar at section 204(g) of the Act. The Director additionally determined that the Petitioner did not establish, by clear and convincing evidence, that he married G-S- in good faith. The Director highlighted the fact that the personal statements from the Petitioner in the record provided only general information regarding his relationship with, and intent in marrying, G-S-, and lacked probative details that the Petitioner and G-S- entered the marriage in good faith. The Director further highlighted the fact that the remaining evidence in the record—including tax documents, various photographs, and copies of lease agreements—provided only minimal evidence that the Petitioner's marriage to G-R- was entered into in good faith, because the evidence did not provide specific details regarding the Petitioner's and G-S-'s courtship.

On appeal, the Petitioner's sole assertion is that the Director "erroneously presumed that [he] was still in removal proceedings when [the Petitioner and G-S-] got married . . . In fact, [he] was no longer in removal proceedings when they got married. His removal proceedings [had] already concluded on October 25, 2017, when the Board of Immigration Appeals . . . dismissed his appeal." However, the Petitioner is incorrect. The Petitioner was ordered removed in [redacted] 2016, his appeal was dismissed in October 2017, and he married G-S- in [redacted] 2018. Critically, however, the Petitioner has not departed from the United States following his order of removal, and therefore, his removal proceedings are still ongoing, as a non-citizen subject to a removal order who has not departed the United States in compliance with the order remains in removal proceedings and subject to section 204(g) of the Act. 8 C.F.R. § 245.1(c)(8)(ii)(A). As the Petitioner does not otherwise dispute the Director's determinations regarding the evidence submitted in support of his petition, we agree with the Director's determination that the Petitioner has not established, by clear and convincing evidence, that he married G-S- in good faith. Accordingly, approval of his VAWA petition is barred by section 204(g) of the Act.

ORDER: The appeal is dismissed.

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