U.S. Citizenship and Immigration Services

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

In Re: 27673018

Date: AUG. 23, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

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 petition, concluding that the record did not establish that the Petitioner had entered into a qualifying relationship with a United States citizen. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also 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. 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). While we must consider any credible evidence relevant to the VAWA self-petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner, a native and citizen of Mexico, filed her Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in May 2020. The Petitioner claimed to have been in a common law marriage in Texas with J-R-T-[1], and to have resided with him from December 2017 to June 2018. With her VAWA petition, the Petitioner submitted birth certificates for herself and her

[1] We use initials to protect individual identities.

children, copies of identification documents for J-R-T-[2], copies of J-R-T-'s criminal record, utilities and bills addressed to the Petitioner and J-R-T- separately, a personal statement, copies of a protective order filed against J-R-T- by the Petitioner, and other evidence to establish that she was the victim of battery or extreme cruelty. Following review of the initial evidence, the Director issued a request for evidence (RFE). In the RFE, the Director noted the specifics of Texas state family law regarding common law, or informal, marriages, and requested evidence to support her assertion that she was in a common law marriage with J-R-T-. In response to the RFE, the Petitioner submitted an additional affidavit, copies of text messages, letters from friends who knew them, and affidavits clarifying why the Petitioner had indicated on her VAWA petition that she was single, and why she had filed her taxes as single. Ultimately, the Director denied the VAWA petition, and Director determined that the Petitioner did not establish a qualifying relationship as the spouse of a U.S. citizen or eligibility for immigrant classification based on the qualifying relationship.

On appeal, the Petitioner submits a brief and new evidence, consisting of a confirmation of J-R-T-'s birth in Texas and a new personal affidavit. In her brief, the Petitioner contends that the Director erred in not applying the "any credible evidence" standard, and notes that she has submitted all of the evidence that she was able to in order to establish her common law marriage to J-R-T-. The Petitioner further contends that the evidence in the record establishes that she entered into a common law marriage with J-R-T-.

In order to determine the validity of a marriage for immigration purposes, we look to "the law of the place of celebration of the marriage." *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). We note that the Petitioner is attempting to establish her eligibility under Texas Family Code § 2.401(a)(2), which states that a common law marriage may be proved by evidence that the couple "agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married." The Petitioner asserts that upon her moving in with J-R-T- in December 2017, they immediately considered themselves to be married, and in her statements, indicated that her mother-in-law referred to the Petitioner as her daughter in law, and that they introduced each other as husband and wife to their friends. In our review of the Petitioner's first statement, submitted with her initial VAWA petition evidence, she stated, "[a]bout two weeks after [she] agreed to be [J-R-T-]'s girlfriend in or around November of 2017, [they] made the decision to formalize [their] relationship even more and [she] agreed to move into his house." The Petitioner further stated that J-R-T- "would always say that he wanted to be with [her] forever and that he couldn't wait to be married by the court." In her second affidavit, submitted in response to the Director's RFE, she stated that J-R-T- "asked her to move in with him and marry him" and that when she moved in with him in December 2017, she considered them to be married.

While the Petitioner's statements and letters from those who knew them indicate that they called themselves husband and wife, the Petitioner has not established that she entered into a common law marriage with J-R-T-. As noted in the Director's RFE, Texas Family Code § 2.401(b) requires that if "a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it

[2] The Director's decision also noted that the Petitioner had not established that J-R-T- was a United States citizen. With her appeal, the Petitioner submits a Birth Verification from the County [redacted] Texas, which indicates that a record was found for J-R-T-, and his place of birth was [redacted] Texas. As such, we withdraw the Director's determination that the Petitioner had not established that J-R-T- was a United States citizen.

is rebuttably presumed that the parties did not enter into an agreement to be married." As explained by the Director, Texas law requires that a common law marriage be dissolved as any other marriage, through divorce proceedings, and that if those proceedings are not commenced within two years of the couple's separation, the state of Texas assumes that the common law marriage never existed, unless proven otherwise. The Petitioner has not addressed this, either in her response to the Director's RFE, or in her brief or additional statement submitted on appeal.

Upon review of the record, the Petitioner has not established by a preponderance of the evidence that she was in a common law marriage with J-R-T-. The record does not include statements from the Petitioner and J-R-T- showing mutual agreement to be married or otherwise establishing this requirement. Regarding whether the Petitioner and J-R-T- lived in Texas as a married couple and represented to others that they were married, the record includes inconsistencies and a lack of documentary evidence to establish these requirements. In her initial statement submitted with the VAWA petition, the Petitioner did not describe J-R-T- as her spouse and stated that J-R-T- "couldn't wait to be married by the court." The Petitioner stated that they had a party and that J-R-T- gave her a ring because they "were now in a serious relationship and were living like a family" and that J-R-T- "would always say he was ready to marry [her]," while in her second statement, she claims that she considered her and J-R-T- married as soon as they moved in together.

The documentary evidence submitted by the Petitioner included bills which were separately addressed to the Petitioner and J-R-T-, and do not indicate a marital status. While the Petitioner submitted letters from those who knew them, and state that they introduced each other as husband or wife, we conclude that the Petitioner has submitted insufficient evidence regarding her claim of a common law marriage to a United States citizen. While we must consider any credible evidence relevant to the VAWA self-petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). As such, she has not established by a preponderance of the evidence that she had a qualifying relationship as the spouse of a United States citizen and is eligible for immigrant classification based on the qualifying relationship.

**ORDER:** The appeal is dismissed.