U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29322550

Date: DEC. 11, 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. See section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center (Director) denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident) (VAWA petition), raising credibility concerns and concluding that the Petitioner had not established she resided with her U.S. citizen spouse and entered into a qualifying relationship in good faith. 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.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that she was in a qualifying relationship as the spouse of a U.S. citizen, is eligible for immigrant classification based on this qualifying relationship, entered into the marriage with the U.S. citizen spouse in good faith and was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(i)-(iii) of the Act. The petition cannot be approved if the petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. 8 C.F.R. § 204.2(c)(1)(ix); see also 3 USCIS Policy Manual D.2(C), https://www.uscis.gov/policy-manual (explaining, as guidance, that the self-petitioning spouse must show that at the time of the marriage, they intended to establish a life together with the U.S. citizen spouse).

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)(i), (vii). Although we must consider any credible evidence relevant to the VAWA 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).

II. ANALYSIS

A. Relevant Background and Procedural History

In January 2014, the Petitioner entered the United States on a student visa. In [redacted] 2014, the Petitioner married a U.S. citizen, who filed a Form I-130, Petition for Alien Relative (family petition), on her behalf in May 2014. The Petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). In December 2014, the Petitioner and her spouse were interviewed twice by U.S. Citizenship and Immigration Services (USCIS) and gave sworn statements at their second interview. The Petitioner testified as follows: she married her spouse because "she needed papers to show that [she] can stay here in the U.S.," and she would get her change of status or "green card;" she never lived with her spouse; her current address was in [redacted] Florida; her spouse resided in [redacted], Florida while married to her; her spouse spent the weekend with her prior to her first interview with USCIS; she met her spouse the week before she was married to him; she and her spouse "came up" with the story that they met at a party; and she entered into the marriage to evade immigration laws. Her spouse also testified and both the Petitioner and her spouse initialed each page of their sworn statements, which was also witnessed by a third party and signed by them. They each testified to answering the questions freely and stated they were treated "fairly." The Director of the Orlando, Florida Field Office denied the family petition, in relevant part, because the Petitioner's spouse had not established a bona fide relationship with the Petitioner. In denying the adjustment application, the Director also determined the Petitioner was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation.

In October 2019, the Petitioner concurrently filed a VAWA petition, as an abused spouse of a U.S. citizen, and another adjustment application. The Petitioner included a statement, which provided in relevant part, that at her second interview with USCIS, the immigration agent told her to "confess to some scenario." She states, she had "no idea what was about. A false marriage! An accusation which of course was wrong because [her] marriage was everything genuine. Then the immigration agent t[old] [her] that [her] husband said he married [her] just to help [her] out. [She] was shocked." She continues on to say she confronted her spouse about the accusations after the second interview and he admitted to lying to her and USCIS. She states that she learned he had a felony record and hid it from her. The Director issued a request for evidence, and the Petitioner provided a statement by her spouse, dated December 2021. According to her spouse:

> I had a couple of issues with my driving history that she didn't know about and that caught up with me at the time of our meeting at the immigration offices. They brought

these issues up and I had to lie about our marriage not being true. I didn't want that to be used against me since I was being threatened with my record at the time.

The Petitioner also submitted two letters, one by her sister stating the Petitioner and her spouse lived with her ex-husband and one by the sister's ex-husband stating the Petitioner and her spouse rented a room from him. The Petitioner also included a month-to-month lease authored by her brother-in-law, effective March 25, 2014, for the [redacted], Florida address and photographs of her and her spouse.

The Director denied the VAWA petition, stating the evidence submitted to establish joint residence was inconsistent with the Petitioner's 2014 sworn statement attesting to her spouse staying with her only for the weekend prior to the family petition interview. The Director further noted that the Petitioner's and third-party statements did not overcome the inconsistencies in the record as they lacked probative details surrounding the rental of the property. The Director also determined that the Petitioner's 2014 sworn statement attesting to entering into the marriage to evade immigration laws contradicts her statements and those by third parties that her marriage was genuine. The Director found the statements produced in support of the VAWA petition lacked details on the Petitioner's relationship with her spouse. With respect to the photographs, the Director noted they were undated and were not given enough context in the record to overcome the contradiction. Further, the Director determined that the Petitioner did not sufficiently explain how her spouse's criminal record was connected to her confession that she entered into the marriage to evade immigration laws. The second adjustment application was denied because her VAWA petition was denied and therefore there was no immigrant visa immediately available to the Petitioner.

B. The Petitioner Has Not Established She Entered into the Marriage in Good Faith

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that she entered into the marriage with the U.S. citizen spouse in good faith, and not for the primary purpose of circumventing the immigration laws of the United States. Section 204(a)(1)(A)(i)-(iii) of the Act; 8 C.F.R. § 204.2(c).

On appeal, the Petitioner includes some previously submitted documents, the decision denying her family petition, a psychosocial assessment, two new statements authored by her, and a new statement by her spouse dated August 2023. The new statements by Petitioner are similar to her prior statements, i.e., they say they are sworn statements but are not notarized and do not provide much detail about the bona fides of the marriage, each spending a paragraph stating she first met her spouse at her sister's job, providing the date they were married, and noting that a small group of friends and family attended the ceremony. One of the Petitioner's statements on appeal adds the following about her second interview with USCIS: "The officer threw at me a lot of questions about our marriage, which I answered, but they did not seem satisfied with it and kept pressuring and threatening me with jail time if I did not tell them that my marriage was a fraud." Similarly, the statement by the Petitioner's spouse also lacks notarization, reiterates his old statements, i.e., they got married because they wanted to, they met and fell in love, they wanted to have a family, and adds: "In the interview room, we faced a lot of pressure from the officers[.] When the officer brought my records up, he threatened me and my daughter with jail time if I did not agree to deny the legitimacy of our marriage." The psychosocial assessment is authored by a licensed marriage and family therapist, is undated, and does not appear to have been submitted in the record below. The therapist states she interviewed the Petitioner on three

occasions in 2019. The assessment does not speak to the bona fides of the Petitioner's marriage, but merely summarizes how the Petitioner met her spouse and when they were married, adding they went on four dates together. The assessment similarly does not provide details on abuse, other than stating that the Petitioner,

> disclosed she was the victim of emotional and psychological abuse throughout their relationship . . . report[ing] her husband attempted to pressure her into having children and working (despite her immigration status) and would insinuate he would be with someone else if she did not acquiesce.

The therapist diagnosed the Petitioner with post-traumatic stress disorder due to the abuse she suffered and the abuse she witnessed as a child.

The Petitioner asserts that her 2014 sworn statement and her spouse's sworn statement were made under duress and through intimidation. She states she was threatened with jail time and deportation during the interview and did not sign a sworn statement admitting to marriage fraud.[1] The allegations of duress and intimidation are introduced on appeal. Prior statements by the Petitioner and her spouse do not make these allegations against the USCIS officers. These statements are also not affidavits, which would be sworn to and notarized by the affiant. With respect to the Petitioner's spouse's statements, he does not explain why he was intimidated by the USCIS officer or why he believed lying to the officer would prevent him and his daughter from going to jail. Further, the sworn statements themselves attest to being freely given, are witnessed by a third party, initialed on each page, signed by the Petitioner and her spouse, and each who state they were treated fairly during questioning. The Petitioner therefore has not established that the 2014 sworn statements were made under duress or through intimidation.

We now address the Petitioner's assertions on appeal as they relate to her entering her marriage in good faith.[2] The Petitioner asserts that the documents she submitted in support of her marrying in good faith were overlooked by the Director. She also states she was not notified that she would need specific information about the photos, which is why she did not provide it in response to the RFE.

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[1] The Petitioner's attorney, in the appeal brief, questions the existence of the sworn statements based on this statement by the Petitioner. The Petitioner's attorney therefore argues that we should not give weight to the sworn statements. We note that the Petitioner does not say she did not provide a sworn statement. Rather she states she did not sign a document admitting to marriage fraud. The Director does not state in the underlying decision that the Petitioner admitted to marriage fraud or signed a statement admitting to marriage fraud. Further, while the Petitioner's attorney makes arguments about providing the sworn statements in discovery, the attorney does not cite to authority requiring USCIS to provide the sworn statements to the Petitioner or mandating that we not assign evidentiary value to them. The Director properly notified the Petitioner of the existence of the sworn statements and provided the Petitioner with an opportunity to respond. See 8 C.F.R. § 103.2(b)(16)(i) (providing that, if a decision will be adverse to a petitioner and based on derogatory information of which they are unaware, USCIS is required to advise them of the derogatory information and provide them with an opportunity to rebut the information before a decision is rendered).

[2] We note that the Petitioner focuses most of her appeal brief arguing that section 204(c) of the Act, 8 U.S.C. § 1154, which pertains to marriage fraud, does not apply to her. The Director did not make a finding under section 204(c) of the Act, but rather determined that the Petitioner had not provided sufficient evidence to overcome the inconsistencies in the record and had not established her eligibility for immigrant classification under VAWA.

Further, the Petitioner asserts that the Director should not have discounted the lease she provided because it was not dated.

As discussed above, during the interview connected with the family petition, the Petitioner testified to entering the marriage in order to obtain lawful status here in the United States, to never living with her spouse, that her spouse maintained a different address from her during the marriage, her spouse first spent the weekend with her prior to her first interview with USCIS, and she met her spouse the week before she was married to him. Contrary to the Petitioner's assertions, the Director explained that the Petitioner's affidavits lacked sufficient detail about her relationship and marriage. Further, while the Petitioner argues on appeal that she did not know she needed to provide details about the photographs, she has provided no additional context or details. With respect to the psychosocial assessment, as discussed above, it is not clear that this document was provided to the Director below because it is not mentioned in the Petitioner's cover letter responding to the RFE, nor is it referenced in the Director's decision. Setting this aside, while the assessment explains that in 2019 the Petitioner was diagnosed with PTSD, the Petitioner does not explain how the assessment evidences that her relationship with her spouse was bona fide or that she entered into the marriage in good faith. With respect to the lease, the Petitioner does not explain why the document is probative. Without additional proof that the Petitioner and her spouse actually lived together and paid rent, which would evidence an intent to live a life together, the lease does not clarify the inconsistencies raised in the record.

While we must consider any credible evidence relevant to the VAWA 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). We have reviewed the record in its entirety and conclude the Petitioner has not established by a preponderance of the evidence that she entered into her marriage in good faith. As this issue is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's other appellate arguments. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.