



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

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

In Re: 26739735

Date: JULY 28, 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 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 (VAWA petition), concluding that the Petitioner did not provide sufficient credible evidence to establish that she entered into the marriage with her U.S. citizen spouse in good faith, resided with him, and was battered or subjected to extreme cruelty perpetrated by her spouse. The matter is now before us on appeal.

On appeal, the Petitioner references previously provided evidence, and asserts that Director applied incorrect standard of proof in evaluating this evidence and did not give proper weight to the affidavits she submitted.

The Petitioner bears the burden of proof to demonstrate eligibility for the benefit sought 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 VAWA petitioner must establish, among other requirements, that they entered into the qualifying marriage to the U.S. citizen spouse in good faith, and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(ix). 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 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 such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The record shows that the Petitioner, a national of Uzbekistan, married S-K-¹ a U.S. citizen, in [REDACTED] 2015. In July 2019, she filed the instant VAWA petition based on this marriage, representing that she and S-K- resided together from May 2013 through January 2017.² The Director subsequently issued a notice of intent to deny the VAWA petition, advising the Petitioner in part that the evidence was not sufficient to establish the requisite good faith marriage and residence with her spouse. The Director explained that photocopies of the cancelled checks she submitted to show that she and her spouse had a joint bank account appeared to be forged, as the dates and her and S-K-'s signatures on those photocopies were written in ink. The Director also advised the Petitioner that the balances on the bank account statements did not add up correctly, and the third party affidavits she submitted were neither detailed, nor supported by other evidence, which lessened their probative value. In response, the Petitioner submitted a personal statement, copies of several rent payment receipts dated between June 2015 and February 2017, a divorce a judgment issued by a New York court in [REDACTED] 2017, two additional affidavits, and four photographs.

The Director denied the VAWA petition,³ concluding in pertinent part that the Petitioner did not show she entered into the marriage with S-K- in good faith. In reaching this conclusion, the Director explained that the weight of the evidence the Petitioner submitted to prove comingling of financial resources was diminished by the unresolved credibility concerns; in particular, the cancelled checks did not appear genuine, the hand-written rent payment receipts did not indicate who paid the rent and how it was paid for, and, while the third party affidavits had some probative value, the evidence considered in the aggregate was not sufficient to demonstrate that the Petitioner satisfied the good faith marriage requirement for the requested immigrant classification.

On appeal, the Petitioner does not offer any additional evidence. She asserts that the rent payment receipts are adequate to establish that she resided with her ex-spouse, and the Director's failure to give those receipts proper evidentiary weight is just one example of applying a too strict standard of proof in these proceedings. She further states that the Director erred by not fully crediting the numerous affidavits attesting to the good faith nature of her marriage and her residence with her ex-spouse.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

We acknowledge the Petitioner's assertions on appeal, but conclude that they are insufficient to overcome the Director's adverse determination. As stated, the Petitioner must prove eligibility for the

¹ We use initials throughout to protect the individuals' privacy.

² We note that in February 2017 the Petitioner filed an initial VAWA petition, likewise, based on her marriage to S-K-, which the Director denied for abandonment in April 2022. The Petitioner filed a motion to reopen and reconsider the Director's denial for abandonment, which was dismissed. The Petitioner did not appeal that decision.

³ The Director initially denied the VAWA petition for abandonment, but later reopened the proceeding and issued a decision on the merits.

requested immigration benefit by a preponderance of the evidence. To satisfy this standard of proof, the Petitioner must show that what she claims is “more likely than not” or “probably” true. *Matter of Chawathe*, 25 I& N Dec. at 375-76. To determine whether the Petitioner has met this burden we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

Moreover, the Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner still does not explain the bank account statement discrepancies pointed out by the Director, nor does she address the apparent alterations of the dates and signatures on the photocopies of the cancelled checks she submitted. We cannot therefore conclude based on this evidence that the Petitioner and her spouse had a joint bank account they used for various expenses during their marriage, and that the marriage was therefore “more likely than not” entered into in good faith. Furthermore, unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Given the unexplained discrepancies in this case, we agree with the Director that the rent payment receipts alone are not adequate to support the Petitioner’s claim that she and S-K- resided together at the address listed therein, absent evidence that they were jointly responsible for paying rent, such as a lease agreement, cancelled checks reflecting the receipted amounts, or other documentation.⁴

Similarly, while we acknowledge the previously submitted affidavits, we cannot give them significant weight in establishing good faith marriage. When affidavits are submitted to substantiate a claim, we evaluate their probative value based on the extent of the affiants’ personal knowledge of the events they attest to, and the plausibility, credibility, and consistency of their statements with each other and evidence in the record. *Matter of E-M-*, 20 I&N Dec. at 81. The affidavits the Applicant submitted do not satisfy the above criteria, because they not only lack details and corroboration, but are also inconsistent with other evidence. For example, in both her July 2018 and January 2022 statements, the Petitioner describes an incident she claims took place on December 22, 2017, after her neighbors called her at 10 p.m. complaining about the noise and smell of marijuana coming from her apartment. She states that when she entered the apartment with her friends, U-A- and M-B-,⁵ they saw S-K- and other individuals playing cards and drinking, which led to a fight, and she went to a friend’s home where she stayed for a month. She claims that after her son changed the locks in the apartment in January 2018, she returned to the apartment alone in February, started seeing a psychiatrist, and her friends helped her file the VAWA petition and a petition for divorce the same month. While both U-A- and M-B- confirm the timeline of these events in their respective July 2018 affidavits,⁶ it is not consistent with the evidence in the record. Specifically, according to the divorce judgement, the Petitioner filed for divorce from S-K- in [REDACTED] 2017; as of September 2017 they were residing at different addresses, and were divorced in [REDACTED] 2017. Moreover, the record reflects that the

⁴ Although not specifically addressed by the Director, we note that one of the receipts is for the rent the Petitioner claims she and S-K- paid for February 2017, while on the first VAWA petition she indicated that as of February 8, 2017, the date she signed the petition, another individual, M-I-, lived with her at the apartment.

⁵ In her 2022 statement, the Petitioner states that the two individuals who executed the 2022 affidavits also went with her to the apartment.

⁶ The record also contains a report from the psychiatrist, who confirms that the Petitioner first visited him in January 2018, and also describes the incident that took place a month earlier, on December 22, 2017.

Petitioner filed her first VAWA petition in February 2017, 10 months before the alleged December 2017 incident, and indicated at the time that someone other than S-K- lived with her at the apartment.

Similarly, the two affidavits dated in 2022 have limited probative value in establishing good faith marriage. M-K-, the affiant who states that S-K- happened to be a driver she hired to drive her from the airport when she first arrived in the United States in 2014, attests that the Petitioner invited her to the wedding, and that they became close friends and visited each other often. But she does not provide any details about the extent of her friendship with the Petitioner and S-K-, or her personal knowledge about the nature of their marital relationship. The other affiant, F-A-, who the Petitioner indicates is her brother, but who identifies himself only as “a family friend,” states that he arrived in the United States in 2010 and knew the Petitioner and S-K- because the Petitioner invited him to the wedding and they “used to go to each other’s houses a lot.” Like the first affiant, F-A- does not offer any specific information about his relationship with the Petitioner and S-K- or insights into their marriage, aside from stating that they were very happy, that he witnessed them fighting on one occasion, and that he later found out they got a divorce. Lastly, while all affiants claim that they were invited to the wedding, and some state that they attended a luncheon and an evening wedding reception at a restaurant with approximately 30 other guests, including S-K-’s family members who traveled from Uzbekistan for the occasion, they provide no details about the wedding. We note that the record includes only one wedding-related photograph of the Petitioner and S-K-, which appears to have been taken on the day of their civil marriage ceremony; two other photographs seem to have been taken on the same day at two different locations,⁷ and one photograph shows the Petitioner and S-K- standing by a tree in a park. In view of the unresolved inconsistencies in the record, the limited probative value of the affidavits, and lack of credible corroborating documentation, the evidence considered individually and in the aggregate remains insufficient to show that the Petitioner “more likely than not” entered into the marriage with S-K- in good faith.

Because the Petitioner is not eligible for the requested immigrant classification on this basis alone, we need not address at this time whether she meets the remaining eligibility criteria for such classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met her burden of proof to establish that she married her U.S. citizen spouse in good faith. Consequently, she has not demonstrated eligibility for the requested immigrant classification as an abused spouse of a U.S. citizen under the VAWA provisions.

ORDER: The appeal is dismissed.

⁷ The Petitioner and S-K- are wearing the same clothes in both photos.