U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-D-B-

DATE: NOV. 20, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a United States citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

* * *

(ix) *Good faith marriage*. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Ghana, last entered the United States on July 9, 2001 as a nonimmigrant visitor. The Petitioner married D-L-[1], a U.S. citizen, on , 2006 in Georgia. They were divorced on 2013. The Petitioner filed the instant Form I-360 on March 17, 2014 based on his relationship with D-L-. The Director subsequently issued a request for evidence (RFE) establishing, among other things, the Petitioner's good-faith intentions in entering into marriage with D-L- and his joint residence with her. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition on the basis that the Petitioner had not established that he entered into marriage with his former U.S. citizen spouse in good faith and that he resided with her. The Petitioner timely appealed.

[1] Name withheld to protect the individual's identity.

On appeal, the Petitioner submits a supporting brief from his counsel of record. We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

III. ANALYSIS

A. Joint Residence

The relevant evidence in the record does not demonstrate that the Petitioner resided with his spouse. The Petitioner asserted on his Form I-360 that he resided with D-L- from March 2006 through January 2013 and they last resided together at their shared residence in Georgia. However, in the Petitioner's November 2014 statement in response the Director's RFE, the Petitioner maintained that their last shared residence was in South Carolina. He indicated generally that he resided with D-L- from 2006 to 2007 and then from 2010 to January 2013, but did not otherwise provide a coherent history and timeline of, or describe in any probative detail, their shared residences. Additionally, his assertions in his written statement are inconsistent with the Forms G-325, Biographic Information, he executed in 2012 and 2013 in connection with the multiple Forms I-130, Alien Relative Petition, D-L- had filed on his behalf. For instance, the Petitioner indicated on the two Forms G-325A that he had continuously resided at the couple's shared residence in Georgia from January 2007 through December 2011, contrary to his written statement, in which he asserted that he moved out and was separated from his wife from June 2007 until 2010 and lived mostly in Georgia during that period. Additionally, the Petitioner indicated that following his marriage, his friend moved in with him and D-L- to help keep down expenses. However, according to two letters, he and the Petitioner were already roommates and it was D-L- who moved in with them in March 2006. Accordingly, the Petitioner failed to provide credible, probative testimony of his residence with D-L-.

The record also includes several supporting statements from the Petitioner's friends and some of D-L-'s relatives, which do not establish the Petitioner's joint residence with D-L-. In an undated letter, D-L-'s minor daughter indicated that she lived with her mom and the Petitioner. However, her brief letter does not describe her joint residence with the couple in any probative detail. The record also contains an undated letter from D-L-'s father, and a letter from D-L-'s cousin, who stated that they have knowledge of the couple's joint residence. Their statements fail to describe any visits to the couple's residence or otherwise establish the basis of their testimony. Likewise, the letters of the Petitioner's friends, a church elder, also provided no substantive information about any particular visit or interactions with the couple at their residence. Although each later submitted a second letter, they focused primarily on the abuse the Petitioner suffered and did not set forth any additional probative information regarding the Petitioner and D-L's joint residence. The Petitioner's former roommate, asserted in his letters that he had personal knowledge that D-L- and the Petitioner resided together because he lived with them for an unspecified period after D-L- moved into the residence that he and the Petitioner shared. However, as discussed previously, the

Petitioner's statement contradicts this assertion and indicated that it was who moved in with him and D-L-, thereby diminishing the probative value of letter.

The Petitioner also submitted below documentary evidence of his shared residence with D-L-, which, considered cumulatively, do not overcome the noted discrepancies in the record to demonstrate that the Petitioner and his spouse resided together. The Petitioner submitted copies of joint IRS Forms 1040, U.S. Individual Income Tax Returns, for 2010, 2011 and 2012. As the Petitioner admits, the joint tax returns were supposed to be "amended" returns but had never been filed by D-L- as she had advised him she would. He also submitted letters dated, September 27, 2012, and November 21, 2014, from the management office, which indicate that the Petitioner had leased the apartment in S.C. with D-L- since December 16, 2011. However, the 2011 to 2012 lease for these premises, which did not include the signature page and is not initialed on each page, indicated that D-L- was the sole lessee and the Petitioner was an occupant. The 2012 to 2013 lease for the same premises is signed only by the Petitioner as the lessee and did not identify D-L- as the lessee or an occupant. The Petitioner stated that the reason D-L- was not listed as the lessee was because the latter was upset and refused to sign the lease after hearing that the Petitioner had discussed her poor credit history with the management office. This does not explain, however, why D-L- was not listed as an occupant of the premises, as the Petitioner had been listed in the prior lease.

In addition, the Security Deposit Disposition notice indicating a January 2013 move out date for the apartment identifies the most recent lease as the 2011 to 2012 lease, instead of the 2012 to 2013 lease. The 2012 to 2013 lease listing the Petitioner as the lessee is also inconsistent with the billing statement records for the premises from the management office in the record, which show D-L- as the lessee and contact for the premises. On appeal, the Petitioner contends that he explained "that it took him some time to transfer all his accounts to his name, which resulted in [D-L-] being listed singularly on the billing statements." To the contrary, the Petitioner in his statement explained that it took him some time to change his documentation to his new address in Georgia *after* moving out of the claimed marital home in and offers no explanation for why maintained billing records for the premises under D-L-'s name as the lessee, if in fact, the Petitioner was the lessee on the 2012 to 2013 lease. Similarly, the record evidencing civil action for an order to vacate the premises against D-L- does not demonstrate that the Petitioner resided there with D-L- as he contends. The record does contain a six-month lease from 2006 for the address, but it is in D-L-'s name only. The record also includes three Western Union payment records from May 2012 and July 2012 to from the Petitioner for the apartment rent which show that he made some payments, but they do not establish that he actually resided at that residence.

The record also contains a single utility bill and a medical bill for D-L-'s daughter addressed only to D-L- at the apartment, dated several months after the Petitioner claimed to have left the residence. The remaining relevant documentary evidence includes: a 2006 bank statement addressed to the Petitioner and D-L- at the residence, showing no account activity; a 2012 bank statement in D-L's name only addressed to the residence; three 2012 bank statements addressed to the Petitioner at the residence; car insurance records covering both the Petitioner

and D-L- as drivers in 2006; a 2006 utility bill in D-L-'s name only for residence; the Petitioner's 2012 family life insurance schedule of benefits; the Petitioner's life insurance application; the Petitioner's 2011 24-month short term life insurance designating D-L- as the second beneficiary; a 2011 furniture sales order in both their names; a handwritten hotel bill; two 2012 cable bills in D-L-'s name; a medical insurance application without any corresponding policy confirmation; and three months of homeowner's insurance records from 2006 that are in both their names. These documents, considered cumulatively, do not sufficiently overcome the discrepancies identified in the record to establish that the Petitioner resided with D-L-.

On appeal, the Petitioner asserts that the Director disregarded relevant and probative evidence and applied a more stringent evidentiary standard than the preponderance of the evidence standard applicable in these proceedings. As the Petitioner correctly observes, Congress, recognizing the difficulties battered spouses face in obtaining probative evidence to satisfy their burden, allowed U.S. Citizenship and Immigration Services (USCIS) to consider "any credible evidence" in these proceedings. However, a self-petitioner must demonstrate his or her eligibility by a preponderance of the evidence that is applicable to all immigrant visa petitions. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Further, USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. *See* Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this evidentiary standard, USCIS is not required to find the Petitioner's evidence sufficient to establish his joint residence with his spouse, particularly where, as here, we have specifically noted deficiencies in the record that the Petitioner has not overcome.

A full review of the record indicates that the Director considered all relevant, probative evidence and exercised proper discretion in determining their evidentiary value. *See* Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence). The record contains several inconsistencies in the Petitioner's statement and other evidence regarding the period of his claimed shared residence, for which he has not provided reasonable explanations. The Petitioner in his statement does not specify the dates and addresses of his residence with his wife in chronological order, and he does not describe their homes or shared residential routines in any detail, apart from the abuse. The Petitioner's friends also do not describe their visits to the couple's residences in any probative detail. Although the Petitioner has some documentary evidence, it is insufficient to overcome the noted inconsistencies and establish his shared residence. Accordingly, the relevant evidence of record, considered cumulatively, does not establish the Petitioner's joint residence with D-L-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner resided with his former spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Entry into the Marriage in Good Faith

The Petitioner has also not demonstrated that he entered into his marriage with D-L- in good faith. In his written statement, the Petitioner briefly indicated that he met D-L- in 2005 and that after a couple months of courtship, they were married in 2006. He asserted that he married D-L- out of love. However, the Petitioner's statement does not provide any probative details of the couple's initial meeting, courtship, engagement, wedding, joint residence or any of their shared experiences,

apart from the abuse. The Petitioner also offered no substantive information regarding the circumstances under which he and D-L- resumed their relationship after being separated for approximately three years from 2007 through 2010.

The letters of the Petitioner's friends, his church elder, and his spouse's father in law, daughter and cousin, submitted below, are similarly lacking in probative information regarding any interactions or social occasions they had with the couple to demonstrate their knowledge of the Petitioner's good-faith marital intentions in marrying D-L-. two letters also lack such substantive information about his interactions with the couple while he resided with them as their roommate or during any other occasion. Additionally, the probative value of letters is diminished given the noted discrepancies previously identified between his letters and the Petitioner's statement regarding residence with the couple.

As discussed, the documentary evidence in the record includes the unfiled federal income tax returns, leases, bank statements, cable and utility bills, insurance records, a furniture order, Western Union money transfers, a hotel receipt, and a medical bill for D-L-'s daughter. The three bank statements from for April, May, and October 2012 reflect joint savings and checking accounts with little or no activity. Likewise, a joint checking statement from October 2006 had a $0 balance and no activity. The record also contains a statement from August 2012, which has significant activity and is addressed to D-L- at the address, but it is not a joint account. The Petitioner's marriage certificate and a few undated photographs of the Petitioner and D-L- on the day of their wedding and three other unspecified occasions, are also insufficient to establish the Petitioner's good-faith intentions. The marriage certificate and photographs establish a legal marriage and that a relationship existed between them, but without probative testimony, they do not evidence the nature of the relationship between the Petitioner and D-L- to establish the Petitioner's good-faith marital intentions.

On appeal, the Petitioner asserts that when analyzing the quality and quantity of the documentary evidence submitted the Director failed to consider the abuse the Petitioner suffered. The Petitioner contends that the Director instead "demanded evidence that even married and functional couples may have trouble providing." Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the Petitioner does not provide any detailed, probative information regarding his intentions in marrying D-L-. In his statement, the Petitioner briefly asserted his love for D-L-, but does not describe their courtship, engagement, wedding, joint residence or any of their other shared experiences, apart from the abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for D-L- during the couple's courtship or marriage. The Petitioner's documentary evidence has been considered and it shows that the couple shared some joint finances. However, when the credible and relevant evidence is viewed in the totality, the preponderance of the evidence fails to demonstrate that the Petitioner

entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's grounds for denial as he has not established that he entered into marriage with D-L- in good faith and that he resided with her. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of G-D-B-*, ID# 14474 (AAO Nov. 20, 2015)