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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-D-B-

DATE: OCT. 13, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

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). The Acting Director, Vermont Service Center, denied the petition, and, on January 29, 2015, we dismissed an appeal of that denial. The matter is now before us on a motion to reconsider our prior decision. The motion will be denied.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the Petitioner did not establish that he married his U.S. citizen spouse in good faith and was battered or subjected to extreme cruelty during their marriage. The Director also found that the petition was barred under section 204(c) of the Act because the Petitioner attempted to enter into a prior marriage for the purpose of evading the immigration laws. We dismissed the Petitioner's appeal, finding that the evidence established that the Petitioner was battered or subjected to extreme cruelty by his spouse, but that the evidence did not demonstrate that the Petitioner married his spouse in good faith, and approval of his petition was barred by section 204(c) of the Act. Our prior decision is incorporated here by reference.

The Petitioner now requests reconsideration, alleging that we made several errors in our previous decision and that we did not correct previous errors made by the Director. He submits a brief and copies of previously submitted evidence. The Petitioner has not met the requirements of a motion to reconsider because he did not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision. Nonetheless, we will treat the Petitioner's motion to reconsider as a motion to reopen and address it on the merits.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner married his first spouse, A-G-,[1] a U.S. citizen, on [redacted] 2001. A-G- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on February 20, 2002. The

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

Petitioner's marriage to A-G- was declared void by the District Court in , Texas on 2003. In a decision dated June 25, 2004, the Director denied A-G-'s Form I-130 on the ground that the marriage was entered into solely to obtain an immigration benefit. The Petitioner married his second spouse, R-D-,[2] a U.S. citizen, on 2003. R-D- filed a Form I-130 on the Petitioner's behalf on May 28, 2003. The Director denied R-D-'s Form I-130 in a decision dated March 25, 2005, finding that the Petitioner previously entered into marriage with A-G- for the purpose of evading the immigration laws, and that R-D-'s Form I-130 was barred by section 204(c) of the Act. The Petitioner and R-D- separated in June 2008 and the Petitioner returned to Tanzania, where he currently resides. On September 8, 2008, the Board of Immigration Appeals (Board) remanded the denial of R-D-'s Form I-130 to the Director on the grounds that the Director did not issue a notice of intent to deny (NOID) prior to denying the petition.

The Petitioner filed the Form I-360 on August 8, 2011, alleging that he was the abused spouse of R-D-. The Director issued a NOID on December 5, 2012, allowing the Petitioner an opportunity to demonstrate that he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, was battered or subjected to extreme cruelty by R-D- during their marriage, married R-D- in good faith, and was not subject to the bar at section 204(c) of the Act for marrying A-G- for the purpose of evading the immigration laws. The 2012 NOID was returned to the Director as undeliverable. The Petitioner later submitted a letter, dated February 19, 2013, in which he indicated that he did not receive the 2012 NOID by mail but became aware of it through a Freedom of Information Act (FOIA) request, and addressed some of the issues raised in the 2012 NOID. On November 22, 2013, the Director issued a request for evidence (RFE) of the Petitioner's good moral character. The Director then denied the Form I-360 in a decision dated January 8, 2014, finding that the Petitioner had not established that he resided jointly with R-D- during marriage and was a person of good moral character.

The Petitioner filed a motion to reconsider on January 21, 2014. The Director responded with a second NOID, dated March 28, 2014, in which the Director granted the motion and discussed errors in the denial of January 8, 2014. The Director stated that the January 8, 2014, denial mistakenly indicated that the Petitioner did not establish joint residence with R-D-. Instead, the Director stated that the January 8, 2014, denial should have indicated that the Petitioner did not establish eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act, battery or extreme cruelty by R-D-, and good-faith marriage to R-D-, and that the petition was barred by section 204(c) of the Act because the Petitioner married A-G- for the purpose of evading the immigration laws. The Director also acknowledged that the 2012 NOID had not been delivered to the Petitioner and that, per the Petitioner's letter, the Petitioner was unaware of the 2012 NOID until he received a copy of his immigration file through his FOIA request. The Director provided the Petitioner a second opportunity to address the issues discussed in the 2014 NOID. The Director also stated in the 2014 NOID that the Petitioner had established his good moral character.

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

The Petitioner responded to the 2014 NOID with a brief, which the Director found insufficient to meet the eligibility requirements. The Director issued a second denial on April 28, 2014, finding that the Petitioner had not overcome the grounds listed in the 2014 NOID. The Petitioner appealed. In our dismissal of his appeal, dated January 29, 2015, we found that, although the evidence established that the Petitioner was battered or subjected to extreme cruelty by R-D-, the evidence did not demonstrate that the Petitioner married R-D- in good faith, and approval of his petition was barred by section 204(c) of the Act because he married A-G- for the purpose of evading the immigration laws.

II. ANALYSIS

In his brief on motion, the Petitioner argues that we erred in using the word "instant" in describing his Form I-360. He asserts, "The word 'instant' is there to incriminate, to make [the Petitioner] look like [he] married [his] abus[ive] spouse in a hurry so [he] can file Form I-360 in a few month[s] . . . ." The Petitioner misinterprets our use of the word "instant." The word "instant," as used in this context, does not define the period of time between marriage and filing, but instead refers to the Form I-360 being discussed in the present case. *See Black's Law Dictionary* (10th ed. 2014).

The Petitioner also alleges that we and the Director erred in stating that the Petitioner did not receive the 2012 NOID. The Petitioner states that he did not "agree or concede[]" that he did not receive the NOID, and that he did eventually receive and respond to that NOID. He asserts that the Director's denial of his Form I-360 originated in the mistaken finding that the Petitioner did not receive the 2012 NOID. However, the Petitioner stated, in his letter dated February 19, 2013, that he "never received" the 2012 NOID by mail, and was "shocked" to see it in the copy of his file he received through a FOIA request. Nevertheless, whether the Petitioner received the 2012 NOID by mail is not relevant to our adjudication of his Form I-360, as he later acknowledged receipt of the 2012 NOID through his FOIA request, responded to that NOID in his February 19, 2013 letter, and received a second NOID on March 28, 2014, in which he was granted another opportunity to submit evidence to establish that he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, was battered or subjected to extreme cruelty by R-D- during their marriage, married R-D- in good faith, and was not subject to the bar at section 204(c) of the Act for marrying A-G- for the purpose of evading the immigration laws. Contrary to the Petitioner's assertions, our dismissal of his appeal was not based on a finding that he did not receive or reply to the 2012 NOID. Instead, our dismissal was based on a finding that, upon *de novo* review of all evidence in the record, the preponderance of the evidence did not establish that the Petitioner was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act and that he married R-D- in good faith. Additionally, our *de novo* review revealed substantial and probative evidence that the Petitioner married A-G- for the purpose of evading the immigration laws, and that he was therefore subject to the bar at section 204(c) of the Act.

The Petitioner emphasizes that the Director's RFE, issued on November 22, 2013, after the Petitioner submitted his February 19, 2013, letter addressing the 2012 NOID, requested only

information regarding his good moral character. The Petitioner appears to argue that the issuance of the RFE implied that he had already submitted sufficient evidence to meet all eligibility requirements other than good moral character. He states that, if the remaining grounds of eligibility had not been established, those issues should have been addressed in the RFE, and that issuance of the RFE regarding only his good moral character suggested that USCIS "accepted" his responses on the other eligibility grounds. However, the Petitioner was notified in the 2014 NOID that he had not submitted sufficient evidence to meet several other eligibility requirements. Although those issues were not addressed in the RFE, the Petitioner received the 2014 NOID and had an opportunity to address the remaining issues at that time.

The Petitioner also contends that victims of abuse petitioning under the Violence Against Women Act (VAWA) "are not held by the burden of proof or preponderance of evidence requirement . . . ." He alleges that, for this reason, the Director granted his request for a "discretionary review" of alternative evidence in light of a showing that his original documents were destroyed by his abusive spouse. He argues that, in our denial of his appeal, we incorrectly applied the preponderance of the evidence standard in determining whether he demonstrated good-faith marriage to his spouse. Instead, the Petitioner asserts, we should have accepted less evidence because, as an abuse victim, he is a "protected applicant when it comes to quantity of evidence presented . . . ." The Petitioner also declares that he submitted sufficient, genuine evidence to establish his good-faith marriage. Contrary to the Petitioner's argument, our finding that the Petitioner was battered or subjected to extreme cruelty does not alter the burden of proof in this case.

In order to qualify for immigrant classification as an abused spouse of a U.S. citizen under section 204(a)(1)(A)(iii) of the Act, the Petitioner must establish, by a preponderance of the evidence, that he is eligible for the benefit he seeks. 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). Although we consider any credible evidence the Petitioner submits, as required by section 204(a)(1)(J) of the Act and 8 C.F.R. § 204.2(c)(2)(i), the "any credible evidence" standard relates to the types of documentation the Petitioner may submit in support of his claim; it does not change the burden of proof. Additionally, because there is reason to doubt the validity of the Petitioner's marriage to A-G-, he must present evidence to show that he did not enter into the marriage for the purpose of evading the immigration laws. As discussed in our detailed, *de novo* review of all relevant evidence in our decision on appeal, the Petitioner has not met his burden of proof in this case.

Additionally, the Petitioner avers that he was never legally married to A-G-, as demonstrated by the fact that the marriage was annulled and declared void, so A-G- cannot be called his "spouse." He contends that he cannot answer questions about A-G- or provide documentation relating to his marriage to her other than the marriage license and annulment. He also alleges that the Director's RFE, which only requested evidence of the Petitioner's criminal history, demonstrated that the Director had already "accepted all of [the] primary evidence" relating to the Petitioner's marriage to A-G-. Also, the Petitioner again contends that, because he is an abuse victim, he is not required to "present beyond the reasonable doubt evidence . . . ." As discussed, the record contains substantial and probative evidence that the Petitioner married A-G- for the purpose of evading the immigration

laws. The fact that his marriage to A-G- was later declared void does not establish that he initially married her in good faith. Furthermore, as discussed, the Petitioner must establish his eligibility for the benefit he seeks by a preponderance of the evidence. The Petitioner was notified through the 2014 NOID that he had not yet submitted sufficient evidence to meet that burden, and, as we discussed in our dismissal of his appeal, the record still does not contain sufficient evidence to meet the Petitioner's burden.

The Petitioner also alleges that we erred in stating that the Director's decision of January 8, 2014, contained errors. He avers that our statement was based on the Director's incorrect statement that the Petitioner did not receive the December 5, 2012 NOID, and that our decision was "built . . . on errors of [the Director]." He emphasizes that the Director granted his motion to reconsider on March 28, 2014, and alleges that we "attempt[ed] to disqualif[y] [the] January 8, 2014 letter [from the Director] . . . by saying it contain[ed] errors . . . ." The Petitioner argues that our dismissal of his appeal did not mention the RFE, which "is a key when it comes to displaying [the Director's] . . . errors . . . ." These assertions are not supported by the record. The Director stated in the 2014 NOID that the decision of January 8, 2014, "mistakenly indicated that [the Petitioner] did not establish that [he] and [R-D-] resided together," and that the decision "did not address the other requirements that [the Petitioner] ha[d] not established." Due to the errors in the January 8, 2014, decision, the Director issued the 2014 NOID to provide the Petitioner a second opportunity to establish his eligibility for the benefit sought. The Petitioner has had several opportunities to submit sufficient evidence to meet his burden of proof, and he has not done so.

With regard to section 204(c) of the Act, the Petitioner notes that the Director denied a Form I-130 that R-D- filed on his behalf, on the grounds that the petition was barred by section 204(c) of the Act, without first issuing a NOID. The Board remanded the I-130 to the Director for issuance of a NOID. The Petitioner alleges that the Director did not comply with the Board's order to issue a NOID, but instead closed the case without informing R-D- or the Petitioner. He contends that our dismissal of his appeal, in which we found that the Petitioner's Form I-360 was barred by section 204(c) of the Act, was improperly based on the previous decision of the Director regarding R-D-'s Form I-130, despite the fact that the Director did not issue a NOID in relation to the Form I-130 denial. The Petitioner also alleges that we erred in not mentioning the Form I-130 denial, or the Board's subsequent remand of that decision, in our dismissal of his appeal on his Form I-360.

However, the petition at issue in the present case is the Petitioner's Form I-360, which is separate from the Form I-130 filed by R-D-. R-D- was the petitioner in the Form I-130, and she bore the burden of proof. Although the Board had jurisdiction over R-D-'s appeal of her denied Form I-130, the Board does not have jurisdiction over the Petitioner's separate appeal of his denied Form I-360. The Board's remand of R-D-'s Form I-130 is not relevant to our adjudication of the Petitioner's Form I-360, and our dismissal of the Petitioner's appeal regarding his Form I-360 was not based on the denial of R-D-'s Form I-130. Instead, our dismissal was based on *de novo* review of all relevant evidence in the record, particularly the insufficiency of the evidence the Petitioner submitted, as well as the conviction of A-G- for marriage fraud.

III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. 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. Here, the Petitioner has not met that burden. Accordingly, the motion is denied.

ORDER: The motion is denied.

Cite as *Matter of S-D-B-*, ID# 13904 (AAO Oct. 13, 2015)