



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF G-T-R-

DATE: APR. 1, 2016

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 U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner was not battered or subjected to extreme cruelty perpetrated by his spouse and did not enter into his marriage in good faith.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record of proceedings contains sufficient and credible evidence demonstrating his good faith intentions at the time of his marriage and that he was subjected to battery and extreme cruelty during his marriage.

Upon *de novo* review, we will sustain the appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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.

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which provides, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to,

being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

....

(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 for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

....

(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

(b)(6)

Matter of G-T-R-

persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, claims to have entered the United States as a nonimmigrant visitor on July 1, 1999. The Petitioner married N-T-R-¹ a U.S. citizen, on [REDACTED] 2011, and filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on March 10, 2015. The Director issued a request for evidence (RFE) that N-T-R- is a U.S. citizen, the Petitioner was still married to N-T-R-, was subjected to battery or extreme cruelty by her, and entered into the marriage with N-T-R- in good faith. The Petitioner responded to the RFE with additional evidence. The Director denied the Form I-360 and the Petitioner filed a timely appeal.

III. ANALYSIS

A. Battery or Extreme Cruelty

The evidence in the record establishes that N-T-R- subjected the Petitioner to battery and extreme cruelty during the couple's marriage.

The Petitioner submitted three personal statements during the course of these proceedings in which he credibly and probatively describes act of violence perpetrated against him by N-T-R- during their marriage, such as kicking him in the groin, pouring hot coffee on him, slapping him, and putting a cigarette out on his arm. The Petitioner also submitted letters from his step-daughter and his friends, [REDACTED] which support the Petitioner's claim to having been subjected to battery and extreme cruelty. The Petitioner's step-daughter stated that she witnessed N-T-R- hitting and yelling at the Petitioner, and [REDACTED] indicated that N-T-R- "instigated [the Petitioner] verbally and physically at [his] mechanic shop." A Petition for Relief from Domestic Abuse, in which the Petitioner indicated that N-T-R- kicked him in the genitals, as well as the subsequent Protective Order issued by the District Court for [REDACTED] Iowa, which directs N-T-R- not to abuse or contact the Petitioner, also support the Petitioner's assertion that he was subjected to battery or extreme cruelty.

The evidence in the record of proceedings is sufficient to establish by a preponderance of the evidence that N-T-R- battered the Petitioner and that N-T-R-'s behavior constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, he has satisfied

¹ Name withheld to protect the individual's identity.

(b)(6)

Matter of G-T-R-

section 204(a)(1)(A)(iii)(I)(bb) of the Act, and we withdraw the Director's decision on this particular issue.

B. Entry Into Marriage in Good Faith

The evidence in the record of proceedings establishes that the Petitioner entered into his marriage in good faith.

The Petitioner stated that he met N-T-R- in October 2010, at a brick manufacturing plant where they both worked. He explained that, at first, they had a "normal work related relationship but then we began to take lunch together and started talking about our kids." He indicated that they started dating in November 2010 and that they would go out to eat and that he met her mother and children. The Petitioner recounted that N-T-R- was laid off from where they worked in December 2010 so he helped her with her expenses, their relationship "grew stronger and more intimate," and they moved in together in January 2011 by renting a bedroom in the house of a friend of the Petitioner. He stated that they moved to a friend's mobile home for a short period of time and then to a duplex in [REDACTED] Iowa, and then to an apartment in [REDACTED] Iowa. The Petitioner recounted that N-T-R- obtained a marriage license and arranged with a friend, who is a pastor, to marry them in a small ceremony.

The three statements in the record of proceedings provide details regarding where the couple lived prior to and during their marriage and for how long they lived at each residence, and the Petitioner probatively describes his interactions with N-T-R-'s children and her mother and indicates that he continues to spend time with her children, who live with N-T-R-'s mother, even though he and N-T-R- are separated.

The Petitioner also submitted several letters to support his claim that he entered into his marriage with N-T-R- in good faith. His step-daughter stated that she has many memories with the Petitioner and one of her favorite memories is of an outing with him and her mother. She also related that the Petitioner supports her mother by paying the bills and buying food for her mother. Letters from [REDACTED] and the Petitioner's mother-in-law also support that the Petitioner entered into his marriage with N-T-R- in good faith. On appeal, the Petitioner submits another letter from his mother-in-law, in which she describes the Petitioner's close relationship with her and her grandchildren and she reports that the Petitioner tells her and her grandchildren that he loves them and that he continues to love her daughter.

The Petitioner's documentary evidence, which consists of a bank statement, receipts for payment of rent, tax returns and tax transcripts for tax years 2012 and 2013, court records for a default judgment issued against the Petitioner and N-T-R- for nonpayment of rent, a credit union statement, a letter regarding health care financial assistance, and captioned photographs, also supports the Petitioner's claim that he entered into his marriage with N-T-R- in good faith.

Matter of G-T-R-

The evidence in the record of proceedings is sufficient to establish by a preponderance of evidence the Petitioner's good-faith entry into his marriage. Accordingly, he has satisfied section 204(a)(1)(A)(iii)(I)(aa) of the Act, and we withdraw the Director's decision on this particular issue.

IV. CONCLUSION

On appeal, the Petitioner overcomes the Director's grounds for denial of the Form I-360 and demonstrates that his U.S. citizen spouse subjected him to battery and extreme cruelty and that he entered into the marriage with his spouse in good faith. Accordingly, the Petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of G-T-R-*, ID# 16468 (AAO Apr. 1, 2016)