U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-R-G-

DATE: AUG. 9, 2016

MOTION ON 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* Immigration and Nationality Act (the Act) section 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 Form I-360, Petitioner for Amerasian, Widow(er), or Special Immigrant (VAWA petition) filed by the Petitioner. The Director concluded that the Petitioner did not demonstrate that she entered into her marriage with her spouse, M-R-,[1] in good faith and jointly resided with M-R-. We dismissed a subsequent appeal, affirming the Director's determination that the Petitioner did not establish that she entered into her marriage to M-R- in good faith and jointly resided with him, and we separately concluded that the Petitioner did not establish that she entered into her marriage with M-R- in good faith by clear and convincing evidence and, consequently, the Petitioner could not establish her corresponding eligibility for immigrant classification, and the Petitioner lacked good moral character.[2]

The matter is now before us again on a motion to reopen. With this motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the evidence she submits with the motion to reopen demonstrates that she entered into her marriage with M-R- in good faith, jointly resided with him, and is of good moral character.

Upon review, we will deny the motion to reopen.

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

[2] As our prior decision adequately set forth the facts of these proceedings, we recite here only the facts relevant to our decision on motion.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. ANALYSIS

Considering the evidence of record as supplemented on motion, the Petitioner has not overcome the grounds for denial discussed in our previous decision, which is incorporated here by reference.

A. Good Faith Marriage

On appeal, we discussed the lack of probative detail in the Petitioner's personal statements, as well as in the statements from her family members and friends regarding her first meeting with M-R-, their courtship, wedding ceremony, and shared lives, and concluded that the record did not establish that the Petitioner married M-R- in good faith. We also explained that the documentary evidence filed in support of her VAWA petition did not establish that the Petitioner entered into her marriage with M-R- in good faith.

With this motion, the Petitioner submits a new personal statement and statements from her cousin and a friend. In her new personal statement, the Petitioner discusses how she first met M-R- at a party in November 2009 and later learned that they were coworkers at an [redacted] She explains that, when she met him at the party, he was on vacation from working at the hotel and she next met him at the hotel two or three weeks after the party, when he returned from vacation. For the first few months after they met at the party and later realized they were coworkers, she and M-R- were just friends but she recounts that M-R- would listen to her and support her. The Petitioner reports that M-R- invited her to go on dinner dates and she introduced him to her daughter; she notes that M-R- has twelve children and he treated her daughter like she was one of his children.

The Petitioner also recounts a date in October 2010, when M-R- referred to her as his "girlfriend" and told people with whom they were standing in a line that he was going to marry the Petitioner one day, and M-R- then asked the Petitioner "would you ever marry me?" The Petitioner reports that she asked M-R- if he was serious and he told her that he was, and that is why, in her second personal statement, she indicated that M-R- proposed to her in October 2010 because, while it was not an "official marriage proposal," it was a special day for her. She explains that the actual marriage proposal happened in [redacted] 2010 at a restaurant in North Carolina.

According to the Petitioner, M-R- moved into her apartment, which she shared with her daughter and her cousin, after they married. She recalls that they had a "pretty routine" schedule in that M-R- woke up first, showered and dressed, and made breakfast. The Petitioner then woke up and got her

daughter ready for school and, after breakfast, they took her daughter to her babysitter and drove to work together. After work, she, M-R-, and her cousin made dinner, and she and M-R- took a walk near their apartment.

The Petitioner's cousin, E-P-R, with whom the Petitioner and M-R- lived after their marriage, writes in her personal statement that she met M-R- in early-2010 and she and M-R- and the Petitioner went out for dinner on Valentine's Day in 2010. She also reports that she shared an apartment with the Petitioner when she and M-R- started dating, M-R- would come over four to five times each week and sometimes spend the night, and the Petitioner would visit M-R- but often not stay the night because she had to take care of her daughter. E-P-R- recounts that M-R- related well to the Petitioner's daughter, and, in 2010, the Petitioner told her that M-R- proposed to her. E-P-R- attended their wedding and joined the couple for dinner afterward to celebrate. Finally, she notes that M-R- moved into their apartment after the wedding, and she often went with the Petitioner and M-R- to family gatherings and celebrations.

V-Y-R-, who is a friend of the Petitioner and a family member of M-R-, indicates in her statement that she and the Petitioner worked together starting in 2011, they ate lunch together every day, and the Petitioner attended her family's parties when she was dating M-R-. She recounts that she learned that the Petitioner and M-R- were dating when she visited M-R- and her cousin, with whom M-R- lived, and she saw the Petitioner there. V-Y-R- reports that M-R-'s cousin babysat V-Y-R's daughter Monday through Friday while V-Y-R- was working and she, her cousin, M-R-, and the Petitioner all had dinner together on a "daily basis." She also often spend the night and reports that the Petitioner also spent those nights with M-R- at the same apartment, and she and the Petitioner sometimes drove to work together the following mornings. Finally, she reports that the Petitioner and M-R- attended family gatherings, and she attended their wedding dinner.

The Petitioner's new personal statement provides some additional information regarding how she first met M-R, their courtship, engagement, wedding ceremony, and shared lives but, in light of inconsistencies with the information in the other statements she submits on motion, it does not provide sufficiently detailed evidence to establish that she entered into her marriage with M-R- in good faith. E-P-R- indicates that M-R- came to visit the Petitioner at the apartment she shared with E-P-R- four or five times each week and, while the Petitioner visited M-R-'s apartment "sometimes," she did not stay overnight at M-R-'s apartment regularly when they were dating because she had to take care of her daughter. In contrast, V-Y-R- relates that she had dinner with the Petitioner, M-R-, and his cousin on a daily basis, and the Petitioner often spent the night at M-R-'s apartment. In addition, V-Y-R- mentions that she and the Petitioner met in 2011 when they worked together but V-Y-R- does not mention that her relative, M-R-, also worked at the same hotel, as the Petitioner notes in her personal statement. And, despite having lunch with the Petitioner every day at work, V-Y-R- reports that she only learned that the Petitioner and M-R- were dating when she saw them together at M-R-'s apartment.

In her new personal statement, the Petitioner does not provide any information regarding these significant aspects of her courtship with M-R- or explain these inconsistencies. In addition, her new personal statement does not address the period of time during their courtship between when M-R-

met her daughter and October 2011, which is significant in terms of establishing that the Petitioner entered into her marriage with M-R- in good faith.

In our decision on appeal, we also noted that certain evidence submitted by the Petitioner did not establish that she entered into her marriage with M-R- in good faith. In particular, we noted that the statements from M-R-'s brother and cousin and one of her friends, who claimed to have spent time with the Petitioner and M-R- during their courtship, lacked detailed descriptions of specific events or activities involving the Petitioner and M-R-. The Petitioner does not address our analysis of the prior evidence and, overall, the record of proceedings still does not demonstrate her good faith entry into her marriage.

Accordingly, the Petitioner does not provide sufficiently detailed evidence to establish that she entered into marriage with M-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Joint Residence

On appeal, we observed that the Petitioner did not describe the apartment she shared with M-R- or their residential routines in any detail. We also noted that, in their statements, M-R-'s brother and cousin and the Petitioner's friend did not describe any visit to the couple's apartment, and the leasing agent for their apartment did not indicate whether she interacted with the couple or had any knowledge regarding their joint residence.

On motion, the Petitioner does not describe their shared residence in her new personal statement, although, as noted above, she discusses their daily routine in their residence. However, in her statement, E-P-R- does not provide any information regarding their daily routine, although she also lived in the same apartment with the Petitioner and M-R-. Similarly, V-Y-R- does not state whether she ever visited the couple's apartment. The Petitioner does not otherwise address our prior finding that the evidence does not demonstrate a joint residence during the couple's marriage.

Accordingly, the Petitioner does not establish that she and M-R- resided together during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Section 204(g) of the Act Bars Approval

As we already determined on appeal and determine again on motion that the Petitioner did not establish that she entered into her marriage with M-R- in good faith by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she therefore has not demonstrated the *bona fides* of her marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act and section 204(g) of the Act consequently bars approval of the VAWA petition. On motion, the Petitioner does not address in her brief or elsewhere whether clear and convincing evidence establishes her good faith entry into her marriage with M-R-.

D. Eligibility for Immediate Relative Classification

Because Section 204(g) of the Act bars approval of the VAWA petition, the Petitioner remains ineligible for immediate relative classification. *See* 8 C.F.R. § 204.2(c)(1)(iv).

E. Good Moral Character

On appeal, we found that the Petitioner did not establish her good moral character, as required by the regulation at 8 C.F.R. § 204.2(c)(1)(vii), because she did not address or explain in her personal statements her arrest in 2010 for public assistance and food stamp fraud, and her tax returns and letters from a former employer and a friend were likewise insufficient to demonstrate her good moral character. In the personal statement she submits with this motion, the Petitioner indicates that, in 2009, when she began receiving food stamps, she was recently separated from the father of her daughter and going through "some really hard times." She states that she told officials at the food stamp office that she was not working, although she was working part-time, and she received food stamps for twelve months. The Petitioner recounts that, because she "did not like taking [food stamps] under false pretenses," she later asked the officials that she no longer receive them. She also relates that she was arrested because she attempted to reimburse the government with a personal check and did not realize that the office does not take personal checks so their records reflected that she had not paid back the value of the food stamps she received. Following her arrest, the Petitioner obtained a check from her bank and gave it to her attorney in order to settle her debt. Other than her personal statement, the Petitioner does not present any other evidence on motion regarding her good moral character.

Although the Petitioner provides in her new personal statement her account of how she obtained food stamps by providing false information to a government official and how she was arrested for public assistance fraud and food stamp fraud, she does not describe in detail what, if any, extenuating circumstances caused her to commit these crimes. In addition, she concedes that she knew at the time she received the food stamps that she was not entitled to them because she admits in her personal statement that, at the time she received the food stamps, she was doing so under false pretenses. Finally, the Petitioner has not accepted responsibility for her actions and, instead, attempts to shift the blame to officials at the food stamp office by alleging that they did not tell her that they do not accept personal checks and "this whole thing could have been avoided if they had just told me that." The Petitioner is not correct: she could have avoided committing public assistance fraud and food stamp fraud by not providing false information and her attempt to blame the very officials to whom she provided such false information evidences a lack of good moral character.

Accordingly, the record continues to indicate that the Petitioner engaged in unlawful acts and conduct that falls below the average citizen in the community and adversely reflects upon her moral character under the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The Petitioner has therefore not established her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

III. CONCLUSION

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 not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of E-R-G-*, ID# 17645 (AAO Aug. 9, 2016)