U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-O-M-

DATE: AUG. 19, 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) 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 petition, concluding that the Petitioner had not established that he had a qualifying relationship with his U.S. citizen spouse and was eligible for immigrant classification based upon that relationship because he married his spouse while removal proceedings against him were pending. The Director determined further that the Petitioner did not enter into his marriage in good faith.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence. The Petitioner claims that the Director did not properly analyze or consider the evidence in the record of proceedings.

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

I. 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:

> (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act . . . .
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> . . . .
>
> (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.
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> . . . .
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> (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 statements of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

In a situation where a petitioner marries while in removal proceedings, section 204(g) of the Act applies and prescribes:

> *Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status

> by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Unless a petitioner remained outside of the United States for two years after the marriage, a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed under section 204(a)(1)(A)(iii) of the Act cannot be approved pursuant to section 204(g) of the Act unless the petitioner establishes the bona fides of the marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Section 245(e) of the Act, 8 U.S.C. § 1255(e)(3), states, in pertinent part:

> *Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception.* –
>
> (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
>
> (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
>
> (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner is a citizen of Mexico, who last entered the United States in 1999 with a nonimmigrant visa, and was placed into removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a. The record reflects that the Petitioner married M-T-,[1] a U.S. citizen, on [redacted] 2012,

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

while removal proceedings were pending.[2] The Petitioner subsequently filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). As the evidence submitted with the VAWA petition was insufficient to establish the Petitioner's eligibility, the Director issued an initial request for evidence (RFE) that he entered into his marriage with M-T- in good faith. The Director then issued a second RFE of, among other matters, his good-faith entry into his marriage. The Director also informed the Petitioner in the second RFE that section 204(g) of the Act barred approval of the self-petition because he married M-T- while he was in removal proceedings. The Petitioner timely responded to both RFEs with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility, and the Director denied the VAWA petition. The Petitioner timely appealed and submits a brief and additional evidence on appeal. We have reviewed all of the evidence in the record of proceedings.

III. ANALYSIS

A. Good Faith Marriage

The preponderance of the evidence submitted below and on appeal does not demonstrate the Petitioner's entry into his marriage in good faith, as required under section 204(a)(1)(A)(iii)(I)(aa).

As evidence of entry into his marriage in good faith, the Petitioner initially submitted with the VAWA petition a personal statement, a psychological evaluation, and a letter from M-T-. In response to the initial RFE, the Petitioner submitted tax returns for 2013 and 2014; utility bills; copies of credit cards; letters from his counselor and therapist; and letters from several friends. In response to the second RFE, the Petitioner submitted an email from M-T-; letters regarding mental health services; additional letters from M-T-; an updated letter from a friend; a vehicle registration; and credit card statements. On appeal, the Petitioner submits another personal statement; an updated psychological evaluation; an additional letter from his therapist; a statement regarding his tax returns; and an updated letter from a friend.

In his initial personal statement, the Petitioner recounts that he met M-T- in February 2012 when she interviewed for a position at the hotel he formerly managed. He recalls that he and M-T- "hit it off" from the first day they met, they began a romantic relationship one month later, spent every day together, he proposed to her in May 2012, and they moved in together in September 2012. The Petitioner relates that M-T- previously broke promises to marry him but, in September 2012, after M-T- obtained a marriage license, he gave her $15,000.00 as she requested, and they married the following week. They did not have a wedding because M-T- did not want to have one and he agreed because he was excited to be married to her. The Petitioner also recounts that M-T- asked him for

[2] The Petitioner was ordered removed by an Immigration Judge in 2003 and his subsequent appeals to the Board of Immigration Appeals and the U.S. Court of Appeals for the Ninth Circuit were dismissed, respectively, in 2004 and 2006, but the Petitioner did not depart the United States as ordered. Administrative proceedings are "pending" until an order of removal is carried out and the individual physically departs from the United States. *See* 8 C.F.R. § 204.2(a)(1)(iii).

his credit card after they married and she "maxed it out in days." The Petitioner's initial personal statement provides a general account of his relationship with M-T- but he does not set forth in any probative detail their, courtship, his reasons for marrying, or the couple's wedding, residences, or shared experiences to establish his good-faith marital intentions.

In the personal statement he submits on appeal, the Petitioner provides some additional information regarding his relationship with M-T-. He states that M-T- "made [him] feel special and was very kind to [him]." He also recounts that he met M-T-'s mother and she met his mother, with whom he lived. When M-T- told him that she wanted to marry him, the Petitioner reflects that he felt "happy, excited and complete," and that he "instantly" agreed, which varies from the account in his initial personal statement that he proposed to M-T-. He also explains that they celebrated their wedding with a dinner at the restaurant where they went on their first date, and that her parents, his mother, his brother, and a few of their co-workers attended the dinner, which is also at odds with his initial personal statement, in which he claims that they "did not have a wedding." In his second personal statement, the Petitioner avers that their marriage was "a dream come true" in the beginning, M-T- cooked for him, he played video games with her two children, they both wanted to have a daughter together, and they discussed moving to Utah.

The Petitioner submits letters written by M-T- and several of his friends. The letters from M-T- were written while she was incarcerated and describe M-T-'s feelings for the Petitioner but they do not provide any insights into whether the Petitioner entered into his marriage with M-T- in good faith. In his letters, which are identical, E-W- recounts that he worked at the same hotel where the Petitioner and M-T- worked and he confirms that the Petitioner and M-T- began dating soon after M-T- was hired, he observed "public displays of affection" between the Petitioner and M-T- while they were at work, and he visited the couple's apartment at Christmas in 2012 and for a Cinco de Mayo party. R-F- states that the Petitioner, M-T-, and her children came to him for haircuts; G-C- indicates that the couple patronized his restaurant, including for a dinner following their wedding; and C-M- recalls that she visited the couple's apartment for holiday celebrations. The letters from the Petitioner's friends do not provide detailed information regarding the couple's courtship, residence, and shared experiences and, therefore, are not sufficient to establish the Petitioner's intentions at the time that he entered into his marriage with M-T-.

In support of his VAWA petition, the Petitioner provides several letters from mental health care providers and initial and updated psychological evaluations to establish his good-faith intentions when he married M-T-. The letters indicate that the Petitioner received mental health services related to the claimed abuse and confirm that the Petitioner and M-T- attended "couple's therapy" in July 2013 but otherwise offer no insights regarding the couple's courtship, residence, and shared experiences. The psychological evaluations also primarily discuss the claimed abuse and not whether the Petitioner entered into his marriage with M-T- in good faith. The evaluationsalso reflect that the Petitioner provided additional information in the context of the psychological evaluations beyond that contained in his personal statements.

For example, the Petitioner related to a therapist that he was engaged to another woman when he met M-T- but he ended that engagement and began a relationship with M-T- soon after; M-T- asked him

for a loan of money just a few days into their relationship; and he continued to give M-T- money during their courtship, culminating in the payment of $15,000.00 to her after they married. The therapist concludes in each evaluation that the Petitioner entered into his marriage with M-T- in good faith. Because the psychological evaluations do not provide sufficient details to demonstrate the Petitioner's good-faith marital intentions and they contain information significantly different from that provided by the Petitioner in his personal statements with respect to his relationship with M-T-, they are of little probative value in establishing that the Petitioner entered into his marriage in good faith.

The remaining documentary evidence in the record, including the utility bills, copies of credit cards, credit card statements, vehicle registration, and tax returns, are insufficient to establish the Petitioner's good-faith marital intentions, particularly in the absence of a probative account from the Petitioner of his relationship with M-T-. In particular, the gas bills reflect that, while the bills were addressed to the Petitioner and M-T-, the service was only in the name of the Petitioner. We also note that the attorney for the Petitioner argues in the brief on appeal that the Petitioner gave $15,000.00 to M-T- to pay for medical treatment for her mother. This factual averment by the Petitioner's attorney is not supported by relevant evidence in the record of proceedings and we do not consider as credible evidence the unsupported factual claims of counsel. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Accordingly, the preponderance of the relevant evidence does not establish that the Petitioner entered into marriage with M-T- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Section 204(g) of the Act and Eligibility for Immigrant Classification

A self-petitioner is required to comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv). Because the Petitioner married his spouse while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his VAWA petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard"). Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the Petitioner to establish his good-faith entry into the qualifying relationship by a preponderance of the evidence, and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the Petitioner must establish his good faith entry into the marriage to M-T- by clear and convincing evidence. Section 245(e)(3) of the Act; 8 C.F.R. § 245.1(c)(8)(v). As the Petitioner did not establish his good faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of the VAWA petition.

C. Eligibility for Immediate Relative Classification

The Petitioner is also not eligible for immediate relative classification based on his marriage to M-T- as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because he has not complied with, nor is he exempt from, section 204(g) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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 appeal is dismissed.

Cite as *Matter of J-L-O-M-*, ID# 17859 (AAO Aug. 19, 2016)