



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF R-V-P-

DATE: JUNE 29, 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded that the Petitioner did not provide sufficient evidence to demonstrate the *bona fides* of his marriage by clear and convincing evidence and, consequently, that he did not share a qualifying marital relationship with his U.S. citizen spouse.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has provided clear and convincing evidence that he entered into marriage with his U.S. citizen spouse in good faith.

Upon *de novo* review, we will remand the matter to the Director for issuance of a new decision.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii) 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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 past

(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 . . . 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 VAWA 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:

(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.

(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

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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.

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 is a citizen of Venezuela who last entered the United States on January 13, 2003. The Petitioner was issued a Form I-862, Notice to Appear (NTA), by Immigration and Customs Enforcement (ICE) on March 24, 2012, and was placed into immigration proceedings on [REDACTED] 2012. His proceedings remain pending. The Petitioner married L-T,¹ a U.S. citizen, in Florida on [REDACTED] 2012. The Petitioner filed the instant VAWA petition on December 22, 2014.

III. ANALYSIS

The Director determined that the Petitioner's VAWA petition could not be approved pursuant to section 204(g) of the Act because the Petitioner married L-T- after issuance of his March 24, 2012, NTA and did not remain outside of the United States for two years after their marriage. However, ICE did not file the NTA with the Immigration Court until [REDACTED] 2012; therefore, the Petitioner was not in removal proceedings and subject to section 204(g) of the Act when he married L-T-. *See* 8 C.F.R. § 245.1(a)(8)(i)(D) (defining the commencement period for removal proceedings). Because the Petitioner was not subject to section 204(g) of the Act, we withdraw the Director's determination that the Petitioner did not provide sufficient evidence to demonstrate the *bona fides* of his marriage by clear and convincing evidence and, consequently, that he shared a qualifying marital relationship with his U.S. citizen spouse.

However, we are remanding the matter to the Director for a new decision on the merits of the VAWA petition. Specifically, the Director must consider the following contradictory information provided by the Petitioner in order to make a new determination on whether or not the Petitioner has provided sufficient evidence to establish that he resided with L-T-, that L-T- subjected him to battery or extreme cruelty, and that the Petitioner entered into marriage with L-T- in good faith.

¹ Name withheld to protect the individual's identity.

IV. CONTRADICTORY EVIDENCE

On the VAWA petition, the Petitioner claimed to have resided with L-T- from August 24, 2012, until November 30, 2013. The Petitioner further stated that he first began living at L-T-'s house to care for her after her "elbow surgery" when he was released from detention in [REDACTED] 2012. Although the Petitioner maintained that he tried to do everything to help L-T-, he reported that she kicked him out of her house by the 4th or 5th day of September 2012. He indicated that L-T- permitted him to move back at the end of September, but her stepfather interfered with their marriage to the extent that the Petitioner claims he was kicked out of the house again on October 6. The Petitioner claimed that he was kicked out of the house and invited to move back in on at least six additional occasions between October 2012 and November 2013, that he was periodically "homeless" during this same period, and that he was often forced to reside with his friends.

The Petitioner provided a psychological evaluation from a psychotherapist, who recounted the information the Petitioner had included in his affidavit but asserted that the Petitioner advised her that L-T- "threw him out of the house approximately seven times during 2013-2014." This timeline conflicts with the one in the Petitioner's own statements, in which he indicated that he lived with L-T- off and on during 2012 and 2013.

The Petitioner submitted three years of Internal Revenue Service (IRS) tax returns for 2006, 2007, and 2013; however, only the 2013 IRS tax return relates to a year in which the Petitioner allegedly resided with and shared a marital relationship with L-T-. The 2007 IRS tax return, which the Petitioner allegedly signed on April 15, 2008, lists the same address that the Petitioner claimed as his apartment on the 2013 IRS tax return. Accordingly, the Petitioner appears to have maintained the same, unrelinquished residential apartment for at least six years from at least April 2008 to April 2014, when he signed the 2013 IRS tax return. This is inconsistent with the Petitioner's claim to have either resided with L-T- in her domicile, been "homeless," or living with friends from August 2012 to November of 2013. Moreover, the 2013 IRS tax return reflects that the Petitioner claimed "single" status for 2013, a year when he was allegedly maintaining a *bona fide* marital relationship with L-T- and moving in and out of her residence.

The Petitioner provided detainee requests that he submitted to ICE while he was detained in 2012. The requests that pre-date the Petitioner's marriage to L-T- were for the Petitioner's dental care, and the requests that post-date their marriage are for reduced bond based on the Petitioner's claim that he had no assets of value but needed to return home in order to provide medical care for L-T- after her surgery. In the statements provided in support of the VAWA petition, the Petitioner recounted that he went to L-T-'s home in August 2012 to cook, clean, and care for her after "elbow surgery." However, the medical records for L-T-'s August 2012 surgery reflect that she had arthroscopic surgery on her shoulder rather than an elbow. The Petitioner's lack of knowledge about the nature of

his wife's surgery and medical condition do not support his claim to have had close marital or even caretaker relationship with his wife during a period of post-operative cohabitation.²

The Petitioner claims that L-T-'s repeated actions of inviting him to live with her and then kicking him out of her home was part of her overall pattern of abusive behavior toward him. Accordingly, whether or not the Petitioner in fact resided with L-T- during the periods that he claimed is material to his assertion that L-T- subjected him to battery or extreme cruelty as well as his assertion that he resided with L-T-. Moreover, part of his claim to have entered into marriage with L-T- in good faith is the Petitioner's assertion that he intended to reside with and take care of L-T- after her August 2012 surgery.

V. CONCLUSION

Based on the above contradictory statements and information, the matter is remanded to the Director for review and to make a new determination as to whether the Petitioner has provided sufficient evidence to establish that he resided with L-T-, that she subjected him to battery or extreme cruelty, and that the Petitioner entered into marriage with her in good faith.

ORDER: The Decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of R-V-P-*, ID# 16772 (AAO June 29, 2016)

² The Petitioner claims to have been a doctor in Venezuela and therefore it is not apparent that he would confuse the different surgeries if he was involved in her post-operative care and recuperation.