U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-L-M-

DATE: MAR. 16, 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 United States citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition and we dismissed a subsequent appeal. The matter is now before us again on a motion to reconsider. The motion will be denied.

I. APPLICABLE 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.[1] 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].

[1] The record indicates that the Petitioner pled *nolo contendere* to and was convicted of driving while under the influence of alcohol (0.08% or more) in violation of section 23152(B) of the California Vehicle Code on [redacted] 2011. She was sentenced to three years of summary probation and ordered to complete a three-month licensed first-offender alcohol and other drug education and counseling program. The Petitioner has not addressed her conviction or her good moral character in her written statement. Further, the conviction record the Petitioner submitted indicated that she remained on probation. The record contains no evidence that the Petitioner successfully completed the court ordered conditions of her sentence and probation. Consequently, in any future filings in these proceedings, the Petitioner must provide a written statement addressing her good moral character and evidence that she successfully completed probation to establish her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

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

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who claims to have last entered the United States on January 11, 1992, without inspection, admission, or parole. She married I-R-,[2] a U.S. citizen, on , 2011, in California.[3] The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 9, 2012, based on her relationship with I-R-. The Director subsequently issued two requests for evidence (RFE) establishing the Petitioner's good moral

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

[3] On motion, the Petitioner submits her 2013 Internal Revenue Service federal tax returns indicating her marital status as single. The record contains no divorce judgment or other evidence of her divorce. As section 204(a)(1)(A)(iii)(I) of the Act allows an individual to seek immigrant classification as the abused *spouse* of a U.S. citizen, the Petitioner must provide evidence of her married or divorced status in any future filings to establish her continuing eligibility for this relief. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act (An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.").

character and her good faith entry into her marriage with I-R-. The Director found the Petitioner's evidence submitted in response to the RFEs insufficient to establish the Petitioner's good faith entry into her marriage. Accordingly, the Director denied the petition, and we affirmed the decision on appeal. On motion, the Petitioner submits a brief and evidence previously submitted on appeal.

III. ANALYSIS

Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the ground for denial.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). Consequently, the motion will be denied for the following reasons.

A. Entry into the Marriage in Good Faith

On motion, the Petitioner resubmits evidence previously submitted below and on appeal and asserts again that the "extensive" evidence of record demonstrates her good faith marital intentions. She maintains that we erroneously minimized the weight of and dismissed the evidence showing her emotional ties to I-R- and the couple's comingling of resources and shared financial responsibilities.

The consideration of any relevant, credible evidence is an evidentiary standard by which USCIS adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). However, USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this evidentiary standard, USCIS is not required to find the Petitioner's evidence sufficient to establish her good faith entry into her marriage, particularly where we have specifically noted deficiencies in the record that the Petitioner has not overcome on motion. Our January 30, 2015, decision on appeal, incorporated here by reference, considered all the relevant evidence in the record under *de novo* review, described the deficiencies therein, and properly determined the evidentiary weight of such evidence under the preponderance of the evidence standard to conclude that the Petitioner had not demonstrated her good faith marital intentions. As discussed in our prior decision, the Petitioner's written statement in the record provided only a general account of her relationship with I-R- and was insufficient in demonstrating her good-faith marital intentions as it did not set forth in any probative detail how she met I-R-, their courtship, wedding ceremony, shared residences, and shared experiences, apart from the abuse. We further explained that the statements of the Petitioner's two friends similarly lacked substantive information regarding their knowledge of the couple's relationship, or of any visits or interactions they may have had with the couple, to establish the Petitioner's marital intentions. Finally, we found that the remaining documentary evidence in the record, including the couple's marriage certificate, photographs, bank statements, and a lease and refund form from was insufficient to establish the Petitioner's

good-faith marital intentions, particularly in the absence of a probative account from the Petitioner of her relationship with I-R-. The Petitioner has resubmitted the same, previously submitted evidence on motion, without identifying any legal or factual error in our determination. As she has not overcome the deficiencies of the record as set forth in here and in our prior decision, the relevant evidence, including the Petitioner's statement, the letters from her friends, and the remaining documentary evidence, considered cumulatively, do not establish her good faith intent in marrying I-R-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into the marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not overcome the ground for denial. The Petitioner has not established that she married I-R- in good faith. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

In these 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. at 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of D-L-M-*, ID# 16065 (AAO Mar. 16, 2016)