U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-P-F-B-

DATE: MAY 11, 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. The Director concluded that agency records and the evidence provided by the Petitioner did not establish that the Petitioner's spouse is a U.S. citizen and that she therefore did not demonstrate a qualifying marital relationship with him and her corresponding eligibility for immediate relative classification. The Director also concluded that the Petitioner did not establish that her spouse subjected her to battery or extreme cruelty.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement and additional evidence.

Upon *de novo* review, we will dismiss 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
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> . . . .
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> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].
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> . . . .
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> (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.

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

> *Evidence for a spousal self-petition –*
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> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .
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> . . . .
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> (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.

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

A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director determined that the Petitioner had not established a qualifying relationship with E-R- and her corresponding eligibility for immediate relative classification based upon that relationship because she had not submitted sufficient evidence of E-R-'s immigration status. The Director explained that a search of U.S. Citizenship and Immigration Services systems also did not contain any information regarding E-R-'s citizenship.

We acknowledge the Petitioner's claim before the Director that E-R- is a U.S. citizen and her assertion that she did not have a copy of E-R-'s birth certificate, passport, or social security number because they ceased to communicate when their relationship ended and "such information should only be known to the owner and government branch that assigned it."

On appeal, the Petitioner provides copies of text messages she purportedly sent to and received from E-R- in which they discussed whether or not he had obtained "it" and in which he allegedly asserts that he was born in Texas; however, these text messages are not sufficient to establish that the Petitioner's spouse is a U.S. citizen.

In this matter, the Petitioner's claims regarding E-R-'s immigration status are not sufficient to support her eligibility. Further, a review of the agency records does not demonstrate that the Petitioner's spouse is either a U.S. citizen or lawful permanent resident. In view of the foregoing, the Petitioner has not established that she has a qualifying relationship with a U.S. citizen or lawful permanent resident, and her corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

B. Battery or Extreme Cruelty

In her initial affidavit, the Petitioner stated that a few months after her marriage to E-R-, she noticed that he "began to change" and "started drinking and on some occasions . . . [and] became very

aggressive." According to the Petitioner, they began to argue all the time and E-R- began to act "weird every time his phone rang." The Petitioner indicated that shortly after this behavior began, one of the Petitioner's coworkers suggested to the Petitioner that E-R- might be gay. The Petitioner asserted that she and E-R- subsequently got into an argument during which E-R- confessed that he was gay and only married the Petitioner so that his family would not find out. After this, the Petitioner asserted that she left E-R-, returned to Colombia with her son, and that all communication between them ceased. The Petitioner did not provide additional probative details to establish that E-R- subjected her to battery or extreme cruelty.

The Petitioner included a psychology report from a Clinical Psychologist who treated her in Colombia. The psychologist indicated that the Petitioner had an "untimely separation" in the United States and returned to Colombia with her son. He diagnosed the Petitioner with "post-traumatic stress," "anxious depressive acute syndrome," and "affective mourning due to separation," but did not indicate that the Petitioner recounted having been subjected to battery or extreme cruelty by E-R-. The Petitioner also provided evidence that she received counseling in Texas. The counselor, in describing the Petitioner's history, indicated that "[the Petitioner's] ex-husband hide [sic] from her his sexual orientation, emotionally hurt her," and that the Petitioner felt "betrayed." However, this counselor's report did not include any additional probative details to establish that E-R- subjected the Petitioner to battery or extreme cruelty.

The Petitioner submitted affidavits from friends who generally asserted that the Petitioner had married E-R- in good faith and that she possesses good moral character, but they did not include any probative details indicating that E-R- subjected the Petitioner to battery or extreme cruelty.

On appeal, the Petitioner indicates that E-R- has ceased to communicate with her. She provides a new report from her counselor in who generally discusses the information provided by the Petitioner in her first affidavit, but does not include any additional probative details of the Petitioner's relationship with E-R- to establish that he battered her or subjected her to extreme cruelty. As discussed, we have reviewed this case *de novo*, including the new psychological evaluation. As it relates to the Petitioner's claim of abuse, the statements of the Petitioner, her counselors, and her friends do not contain specific and probative details of her relationship with E-R- to establish that he battered the Petitioner or that his behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner has not provided sufficient evidence to demonstrate by a preponderance of the evidence that E-R- subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(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 appeal is dismissed.

Cite as *Matter of V-P-F-B-*, ID# 16520 (AAO May 11, 2016)