U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-I-

DATE: JAN. 24, 2017

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 approved but subsequently revoked approval of the Petitioner's Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (VAWA petition), concluding that the Petitioner did not establish that she entered into her marriage with B-V-,[1] a U.S. citizen, in good faith and jointly resided with him during their marriage. The Petitioner filed a motion to reconsider the Director's revocation, and the Director denied this motion.

The matter is now before us on appeal. The Petitioner submits a personal statement, in which she claims that the Director revoked approval of the VAWA petition in error.

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

I. LAW

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

[1] We provide the initials of individual names throughout this decision to protect identities.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

Section 204(a)(1)(A)(iii)(I) of the Act provides that an individual who is the spouse of a U.S. citizen may self-petition for immigrant classification if the individual demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the individual or a child of the individual was battered or subjected to extreme cruelty perpetrated by the individual's spouse. In addition, the individual 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.

The eligibility requirements for a self-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)(1), which provides, 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.
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> . . . .
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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 for a self-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, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
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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 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. ANALYSIS

The Director issued two Notices of Intent to Revoke (NOIRs) after approving the VAWA petition. The Director initiated the NOIRs because, in a separate proceeding unrelated to the Petitioner, a woman named J-R- informed USCIS that her spouse, G-S-, had been in a long-term relationship with the Petitioner since 2004, and J-R- married G-S- to assist him in obtaining legal immigration status.[2] The Director subsequently determined that the Petitioner and G-S- had vehicles registered in both of their names at the address the Petitioner allegedly shared with her spouse, B-V-, and during the time of her marriage to B-V-, and that the two couples registered vehicles under the same insurance policy. The Petitioner responded to both NOIRs but the Director ultimately concluded that the Petitioner did not establish that she entered into her marriage with B-V- in good faith or resided with him, a decision that the Director affirmed on motion. We have reviewed the evidence in the record of proceedings in its entirety, and will separately discuss the two eligibility criteria that formed the bases of the decision to revoke approval of the VAWA petition.

A. Entry into Marriage in Good Faith

The relevant evidence in the record of proceedings does not demonstrate that the Petitioner entered into her marriage with B-V- in good faith.[3] In her personal statements, the Petitioner generally recalls the location of her and B-V-'s first date and what they discussed, but her overall testimony does not provide sufficient information regarding the dynamics of her relationship with B-V- prior to and during their marriage, their courtship, engagement, marriage ceremony, or her intentions when she married B-V-. *See* 8 C.F.R. § 204.2(c)(2)(vii). Regarding J-R-'s testimony to USCIS that the Petitioner and J-R-'s spouse, G-S-, were in a relationship while the Petitioner was married to B-V-,

[2] The Petitioner and her claimed abusive spouse, B-V-, were married in [redacted] 2004, when the Petitioner was also, according to J-R,- in a relationship with G-S-.

[3] The evidence includes, but is not limited to: the Petitioner's personal statements; statements from friends and acquaintances; a bank account statement; copies of credit cards; credit card statements; a utility bill; federal income tax returns; a psychological evaluation; vehicle registration information, and photographs

the Petitioner identifies G-S- as a friend, but denies that they were in a romantic relationship. In a separate statement, J-R- states that her marriage to G-S- "did not work out," but she "never provided a sworn statement to [USCIS], in which I said my marriage to G-S- was a fake marriage."[4] J-R- does not address in her statement whether G-S- was in a relationship with the Petitioner at any time, and she offers no information relative to whether the Petitioner entered into her marriage with B-V- in good faith. Accordingly, the Petitioner's and J-R-'s testimonial evidence does not establish that the Petitioner entered into her marriage with B-V- in good faith.

The other evidence in the record is similarly deficient in establishing the Petitioner's good faith marital intentions. Regarding the vehicle registrations, the Director notified the Petitioner that public records showed that she, B-V-, G-S-, and J-R-, shared the same vehicle insurance policy in 2005, with a [redacted] insured by the Petitioner and B-V-, and a [redacted] insured by G-S- and J-R-. The Director also informed the Petitioner that public vehicle registration records indicate that the Petitioner and G-S- jointly registered a [redacted] and a [redacted] in 2008 and listed an address on [redacted], despite the Petitioner's claims on her VAWA petition to have resided with B-V- at the same address until April 2009. Although the Petitioner states that she and G-S- were never in a relationship and she asserts that a single vehicle insurance policy may cover several individuals, she does not explain the vehicle registration records from 2008 in particular, which show that she and G-S- jointly registered vehicles at an address that she claims to have shared with her spouse and during the time that she remained married to B-V-.

The bank account statement relates to the period of May 14, 2005, through June 14, 2005, but the balance, deposit, and credit amounts have been redacted. The credit cards indicate that they are valid starting in October 2009 although, according to the VAWA petition, the Petitioner and B-V- separated in April 2009. The credit card statements relate to 1-month periods in 2005, 2006, and 2007, respectively, but the balances and purchase amounts are redacted and only the statement from 2007 reflects any purchases. The utility bill relates to a 1-month period in 2005.

In their statements, the Petitioner's friends and associates do not provide any information regarding whether the Petitioner entered into her marriage with B-V- in good faith and only describe the couple's relationship in terms of alleged abuse during their marriage. In his statement, B-V- confirms that he met the Petitioner at a bar in the fall of 2004 and they dated briefly before marrying in [redacted] 2004, but he does not provide any information relative to the Petitioner's intentions when they married. A-G- and O-G- relate in separate statements that they were neighbors of the Petitioner and B-V- and they socialized together on a few occasions. A-G- also asserts that the Petitioner and G-S- were not romantically involved but J-R- thought that G-S- was unfaithful. In their statements, A-G- and O-G- do not provide sufficient details regarding the Petitioner's relationship with B-V- to establish that she entered into her marriage with him in good faith.

[4] The Petitioner submitted J-R-'s statement to the Director after she filed her motion, and it was received by the Director on March 29, 2016, 5 days after the motion denial. Accordingly, J-R-'s statement was not considered by the Director, but we have considered it in our *de novo* review of the evidence.

The federal tax return relates to tax year 2005 and reflects that the Petitioner and B-V- are "married, filing jointly," but the tax return is not signed or dated and does not otherwise indicate that it was filed; accordingly, the tax return is of little evidentiary value to establish the Petitioner's good-faith marital intentions. Many of the undated and uncaptioned photographs show that the Petitioner and B-V- spent time together on several occasions but do not disclose any specific information regarding the Petitioner's intentions when she married B-V-. The psychological evaluation mentions that the Petitioner met B-V- at a bar 2 months prior to their marriage and she loved B-V- but otherwise relates to allegations of abuse during her marriage, and a follow-up email from the person who prepared the psychological evaluation merely repeats how many times meetings with the Petitioner took place and provides no information relevant to the Petitioner's entry into her marriage in good faith.

A preponderance of the relevant evidence does not establish that the Petitioner entered into her marriage with B-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and revocation of her approved VAWA petition on this particular eligibility ground was proper.

B. Joint Residence

The Director correctly determined that the Petitioner did not establish that she resided with B-V-. The relevant evidence in the record of proceedings includes four personal statements from the Petitioner, a purported lease for an apartment on a letter and emails referring to this address, a bank account statement, correspondence relating to credit cards, credit card statements, a utility bill, and a federal income tax return, as well as statements from B-V- and several of the Petitioner's friends and acquaintances

The VAWA petition indicates that the Petitioner resided with B-V- starting in December 2005, although the Petitioner explains in her initial personal statement that B-V- moved into her apartment on shortly after they married in 2004 and, after a few months, they moved to an apartment on ' " around April 2005. She repeats this same information on her second personal statement, although her subsequent personal statements do not mention whether she and B-V- jointly resided. In her personal statements, the Petitioner does not describe the residences she shared with B-V-, their shared belongings, or marital routines in their residence. In addition, the Petitioner only mentions in her personal statements two of the residences she claims to have shared with B-V-, while the VAWA petition indicates a third and final joint residence on until April 2009.

The document which the Petitioner claims is a lease is not actually a lease but, according to the caption and text of the document, is a rider containing additional terms to a lease, which the Petitioner does not provide. In addition, the document is not a complete copy of the original as it is missing pages relating to paragraphs 11 through 20. The letter from the property manager of the apartment indicates that the Petitioner and B-V- were residents in that apartment from April 2005 until February 2006. The two emails dated August 7, 2014, which purport to be from the property manager of the apartment on each include an attached document related to

the apartment. The first attached document only includes the Petitioner's name in relation to the apartment, and the second attached document is a resident ledger for the apartment but does not include the names of either the Petitioner or B-V-.

The bank account statement reflects that the Petitioner and B-V- received a statement relating to a single 1-month period in 2005. The correspondence relating to credit cards is undated and reflects different mailing addresses for the Petitioner and B-V-. The credit card statements are for 1-month periods in 2005, 2006, and 2007, but the statements from 2006 and 2007 do not indicate an address for the Petitioner or B-V-. The utility bill is for a single 1-month period in 2005. The tax return lists the apartment on [redacted] as the address for the Petitioner and B-V- but, as noted above, we assign this tax return little evidentiary weight. We also note that, as discussed above, the Petitioner does not explain why public vehicle registration records indicate that the Petitioner and G-S- jointly registered a [redacted] and a [redacted] in 2008 and listed an address on [redacted] despite her representation on the VAWA petition that she resided with B-V- until April 2009 and their last address was on [redacted]

B-V- notes in his statement that he and the Petitioner lived on [redacted] "for a couple of months," then moved to [redacted] and "called it quits around 2008," but he does mention whether he and the Petitioner ever jointly resided on [redacted] B-V- does not describe their joint residences in his statement, uses an incorrect street name for one of their joint residences, provides a different date than does the Petitioner on her VAWA petition for when their relationship and joint residence ended, and does not indicate that he shared the final joint residence claimed by the Petitioner on the VAWA petition. In their statements, the Petitioner's friend and acquaintances, including two persons who claim to have been neighbors of the Petitioner and B-V-, do not provide any probative details regarding any interactions with the couple at their residence or describe the couple's residence.

Based on the foregoing evidence in the record of proceedings, the Petitioner has not established by a preponderance of the evidence that she resided with B-V- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, and the Director's revocation of the VAWA petition on this basis was also proper.

III. CONCLUSION

On appeal, the Petitioner has not established that she entered into her marriage with B-V- in good faith or jointly resided with B-V-, and, accordingly, the Director had good and sufficient cause to revoke approval of the VAWA petition.

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 I-I-*, ID# 99433 (AAO Jan. 24, 2017)