U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-L-M-Y-

DATE: NOV. 27, 2017

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 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 Petitioner entered the United States as a nonimmigrant visitor, wed L-L-,[1] a U.S. citizen, and later filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director of the Vermont Service Center denied the VAWA petition, concluding that the Petitioner did not establish, as required, that he had a qualifying relationship with his U.S. citizen spouse and was eligible for immigrant classification based on such relationship, resided with her, entered into marriage with her in good faith, or that she battered or subjected him to extreme cruelty.

The Petitioner filed a subsequent appeal, which we rejected as untimely filed. Upon review, we concluded that our rejection was in error and reopened the proceedings on service motion.[2] In this decision we will consider *de novo* the Petitioner's brief, supplemental brief and evidence of record.

Upon review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the petitioner or his or her child was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act. In addition, a petitioner must show that he or she is eligible to be classified as an immediate relative under

[1] We use initials in this decision to protect the individuals' privacy.

[2] Under 8 C.F.R. § 103.5(a)(5)(h), we gave the Petitioner the opportunity to file a supplemental brief. The Petitioner timely responded.

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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). A petitioner may submit any evidence for us to consider, however, we determine the credibility of and the weight to give that evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

On appeal, the Petitioner claims that the Director's conclusions are flawed because she referred to the Petitioner's counsel in her decision, and the Petitioner was not represented by counsel. The Petitioner maintains that the Director's error reflects her basic misunderstanding of the record and his assertions as a *pro se* VAWA Petitioner. We acknowledge the Director's error; nevertheless, such error does not detract from the Director's specific conclusions which are supported by the facts of record.

A. Qualifying Relationship and Corresponding Immigrant Visa

The Petitioner previously entered into marriage with A-Y- under the Edo custom in Nigeria. The Director concluded that the Petitioner did not establish the termination of his marriage to A-Y-, citing to irregularities in the evidence and guidelines from the U.S. Department of State Foreign Affairs Manual (FAM).

As evidence of his divorce from A-Y-, the Petitioner submitted into the record before the Director an 2010 certificate from the Customary Court of Lagos State, stating that the court annulled the customary marriage in 2010 based on the Petitioner's testimony and A-Y-'s failure to appear. The decree awarded custody of their three adult children to A-Y-, and ordered the Petitioner to pay child support and school fees. The Director concluded that the FAM did not provide for customary annulment, and thus she did not recognize the annulment as evidence that the prior marriage was terminated. On appeal, the Petitioner submits a letter from the registrar of the Court in which the registrar declines to amend the annulment entered in and acknowledges a clerical error in using the term annulment instead of dissolution.[3] The Petitioner does not explain why the customary court in issued a decision regarding custody and financial support of three adult children born to the marriage. Additionally, although the Petitioner claims to have filed for divorce in the customary court based on the fact that A-Y- returned the dowry, the decree of annulment in 2010 does not indicate that the return of the dowry was a component of the annulment. These inconsistencies are not explained in the record.

[3] The registrar's failure to acknowledge the legal distinction between annulment and dissolution , and the discrepancy between the suit numbers on the annulment certificate and the registrar's letter decreases the evidentiary weight given to the correspondence.

The Petitioner also submitted an Affidavit of Common Law Marriage and Divorce sworn by the Petitioner's cousin before the High Court of Lagos State at [redacted] in [redacted] 2016 and an affidavit from his mother. Both stated that the return of the dowry in July 2010 marked the end of the traditional marriage. The Petitioner also submitted a personal affidavit indicating that he filed for the dissolution of the marriage in the customary court after A-Y- returned the dowry. The Petitioner asserted on appeal that the Director erred in not considering the witness affidavits and stated that the return of the dowry marked the end of the traditional marriage. The record, however, does not identify the legal actions in the Customary Court in [redacted] Lagos State and in the [redacted] High Court of Lagos State as the same proceedings. Nor does the record explain the relevance of the affidavit filed by the Petitioner's cousin in [redacted] in October 2016, when the annulment was finalized by the court in [redacted] in [redacted] 2010.

Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). When the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). In this case, the record does not contain sufficient evidence to establish the requirements to obtain an Edo customary divorce in Lagos State, that the annulment fulfills the state's requirements for customary divorce, or the legal significance of the affidavits indicating the end of the traditional marriage.

As the evidence contained in the record does not establish that the Petitioner properly terminated his prior customary marriage in Nigeria before his marriage to L-L-, the Petitioner has not established that he had a qualifying marriage as L-L-'s spouse and that he was eligible for immigrant classification based upon that relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Upon further *de novo* review, the record indicates that the Petitioner was divorced from L-L- when he filed the VAWA petition. A petitioner who has divorced an abusive U.S. citizen may still self-petition under VAWA if he 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." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. As discussed below, the Petitioner was not subject to battery or extreme cruelty by L-L-, and accordingly, the Petitioner cannot demonstrate a connection between his divorce from L-L- and the claimed abuse. For this additional reason, the Petitioner does not have a qualifying relationship with L-L- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

B. Good Faith Marriage

Evidence of a good faith marriage may include documents showing the spouses listed each other on insurance policies, leases, tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence and experiences; birth certificates of any children born to a petitioner

and his or her spouse; police reports, medical records, or court documents; affidavits from individuals with personal knowledge of the relationship; and other credible evidence. 8 C.F.R. § 204.2(c)(2)(vii).

The Petitioner submitted a joint lease agreement in support of his VAWA petition. In her notice of intent to deny, the Director cited to discrepancies in the lease document. Notably, the lessor did not sign the lease, and there are inconsistencies between the January 3, 2014, date when the lease agreement was "filled out" and the validity period of the lease (August 2013 - July 2014). In response, the Petitioner explained that the lessor did not allow him to sign the lease in August 2013 because he did not have a social security number and the lessor could not run a background check. This statement is inconsistent with the affidavit of the Petitioner's friend, S-N-, who indicated that L-L- refused to add the Petitioner's name to the lease agreement and that S-N- assisted them in resolving the dispute. The Director further indicated that a notice to vacate for nonpayment of rent was served on the Petitioner and L-L- on January 4, 2014, the day after they executed the lease. On appeal, the Petitioner responds that the proximity in time between the notice to vacate and the lease execution can be explained by the fact that the lease was signed by different individuals than the office that sent the notice to vacate. As the lease agreement was not signed by the lessor, the Petitioner's argument is not persuasive. The record does not explain these inconsistencies.

The Petitioner submitted various photographs with handwritten notations of the names of the people in the photos and the locations, such as the Petitioner and L-L- at the wedding ceremony, in his sister's yard, together with relatives, or at their apartment. The Petitioner did not provide detail about the events depicted in the photographs other than the handwritten captions.

The Petitioner also submitted evidence of joint ownership of a salvage vehicle, joint liability insurance on the car, and a joint monthly bank statement. These documents are some evidence of good faith. However, without probative testimony, these documents are insufficient to demonstrate the Petitioner's good faith marital intentions.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii).

In his personal statements before the Director, the Petitioner claimed that he met L-L- at Walmart, found her attractive, and they spoke and exchanged phone numbers. He explained that they started dating, he fell in love with her, they moved in with one another, and in the early part of their marriage he experienced L-L- as pleasant and easy to communicate with. The Petitioner does not further describe his courtship, the wedding ceremony, shared residence with L-L-, or marital experiences, other than the claimed abuse during the marriage. The Petitioner also submitted copies of statements that he and L-L- executed in connection with a separate immigration proceeding in

which each claimed to love the other and married in good faith. The statements are general and do not provide sufficient probative detail to establish the Petitioner's good faith marital intentions.

In addition, the Petitioner submitted affidavits from S-N- and I-A- who stated that they were friends with the Petitioner when he started dating L-L- and married her, and saw that the Petitioner was very happy with L-L- in the beginning of the relationship and frequently spoke about her. Neither friend provided substantive information about the courtship or wedding ceremony, or claimed to have attended the wedding. Both stated that they visited the Petitioner and L-L- at their apartment, but neither provided additional details about these visits. I-A- described taking the Petitioner and L-L- to a football game, and the Petitioner submitted photographs of this event, but neither the Petitioner nor his friend described the football game with specific details. S-N- did not describe any particular social occasion with the couple.

When viewed in its totality, the evidence does not establish that the Petitioner entered into marriage with L-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa).

C. Joint Residence

The Petitioner also has not established that he resided with L-L- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(i)(C). Evidence of joint residence may include employment, school, or medical records; documents relating to housing, such as deeds, mortgages, rental records, or utility receipts; birth certificates of children; insurance policies; or any other credible evidence. 8 C.F.R. § 204.2(c)(2)(iii).

The Petitioner asserted on the VAWA petition that he resided with his former spouse from July 2013 through April 2014, and they last resided together at an apartment on [redacted] in [redacted] Texas. In addition to the deficiencies relating to the lease, e.g. no lessor signature, unexplained date discrepancies, the Director described a USCIS investigation of the claimed joint residence in which the investigators spoke with leasing agents at the apartment building. One of the agents verified that the Petitioner and L-L- both signed the lease agreement, but had not seen the Petitioner after the lease was signed. Another identified L-L- as a resident of the apartment but did not recognize the Petitioner. Further, the investigators visited the residence of the Petitioner's sister in March 2014, and the Petitioner answered the door clothed in undergarments. Neighbors identified the Petitioner as a resident of the home.

The Petitioner claimed that he went to his sister's home to take care of his mother when she got sick in March 2014, which explained his presence at his sister's during the onsite investigation. This assertion is insufficient to overcome the noted deficiencies in the lease itself and does not establish his residence with L-L-. Further, while the auto registration, auto insurance, and joint bank statement are addressed to the Petitioner and L-L- at the [redacted] address, such evidence is limited in scope and is insufficient, without more probative evidence of joint residence, to establish that the Petitioner and L-L- resided together. Finally, while some of the photographs submitted by the Petitioner show the Petitioner and L-L- with handwritten captions noting they are together at their

claimed joint residence doing chores, together with their pet, or sitting on the sofa together, neither the Petitioner nor his witnesses describes the familial context depicted or adds probative detail about the events. As the Petitioner's statements do not provide sufficient details to overcome the deficiencies of the record, the preponderance of the evidence does not establish that the Petitioner resided with his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd).

D. Battery or Extreme Cruelty

A VAWA petitioner may be found to have been battered or subjected to extreme cruelty if he or she was the victim of any act or threatened act of violence including, but not limited to, violence resulting in mental or physical injury, psychological or sexual abuse, or acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi). To establish that he or she was battered or subjected to extreme cruelty, a petitioner may submit evidence such as police reports, records from a court, school, religious institution, shelter, or social service agency, photographs, affidavits, and other credible evidence. 8 C.F.R. § 204.2(c)(2)(iv).

In the record before the Director the Petitioner asserted that his statements, the affidavits of his friends, and the psychological evaluation of Psy.D., demonstrated that L-L- subjected him to battery and extreme cruelty.

The Petitioner claimed that when his former spouse began to use drugs and drink excessively, she began to verbally abuse him and call him disparaging names. He recounted that she threatened to have him deported, and to harm him, and once tried to pin him to the fence with her car. He said that she spat on his face, pushed him to the floor, and that her bullying, controlling, and jealous behavior terrified and intimidated him. He said that he finally left L-L- when three of her male friends threatened to "deal with" him if he did not leave the apartment. The Petitioner's assertions did not provide sufficient contextual details about specific incidents of abuse or other actions constituting battery or extreme cruelty.

The Petitioner's friend, S-N-, relayed that he witnessed verbal altercations between the Petitioner and L-L-, including incidences when L-L- pushed the Petitioner and tore his clothing. The Petitioner's friend, A-I-, indicated that in November 2013 when he took the couple to a football game, he was "surprised at the verbal abuse, [and] name calling that was being rained on [the Petitioner] by [L-L-]." The Petitioner's friends did not elaborate on these general claims, or describe with particularity specific incidents of claimed abuse.

reported in her psychological evaluation that the Petitioner informed her that he met L-L- at and loved her, but in December 2013 after L-L- started working, doing drugs, and abusing alcohol, she started to abuse the Petitioner verbally with insults and disparaging comments. Based on her interviews, clinical observations, and results of psychological tests, concluded that the Petitioner experienced severe distress in his marriage and developed major depression and clinically significant anxiety. While we acknowledge credentials and

expertise, she does not sufficiently describe actions similar to specific acts of qualifying abuse cited in the regulation, such as acts or threatened acts of violence, rape, molestation, incest, or forced prostitution, or actions that were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi).

The Petitioner does not provide sufficient details about specific incidents of abuse and the evidence in the record does not establish that L-L-'s actions constituted battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not demonstrated that his spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated the requisite qualifying spousal relationship to a U.S. citizen and corresponding eligibility for immediate relative classification based on such relationship, that he entered into the marriage with L-L- in good faith, that he resided with her during their marriage, or that she subjected him to battery or extreme cruelty. Accordingly, the record does not establish the Petitioner's eligibility for immigrant classification as the abused spouse of a U.S. citizen.

ORDER: The appeal is dismissed.

Cite as *Matter of T-L-M-Y-*, ID# 802841 (AAO Nov. 27, 2017)