U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-D-

DATE: OCT. 23, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as the abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief, additional evidence, and copies of previously-submitted documents. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if, among other requirements, she demonstrates that she entered into the marriage with the U.S. citizen in good faith and resided with the U.S. citizen spouse. Sections 204(a)(1)(A)(iii)(I) and (II) of the Act.

The petitioner bears the burden of demonstrating 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, in our sole discretion, the credibility of and weight given to it. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a citizen of Nigeria, married G-S-R-,[1] a U.S. citizen, in 2009, in Minnesota. In April 2010, G-S-R- filed a Form I-130, Petition for Alien Relative (relative petition), on behalf of the Petitioner and the Petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In October 2010, the Petitioner appeared before U.S. Citizenship and Immigration Services (USCIS) for an interview regarding the relative petition and

[1] Initials are used throughout this decision to protect the identities of the individuals.

gave sworn testimony under oath before a USCIS officer. G-S-R- did not attend the interview and withdrew the relative petition based on "serious problems in th[e] marriage" in November 2010.

The Petitioner filed a VAWA petition based on her marriage to, and alleged mistreatment from, G-S-R- in November 2010, which the Director denied in February 2012. The Petitioner filed a second VAWA petition on the same basis in June 2015, which the Director denied in January 2016. The Petitioner filed the instant VAWA petition, again on the same basis, in July 2016.

A. Good-Faith Marriage

A VAWA self-petitioner must establish that she entered into the qualifying marriage in good faith and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(ix). Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(vii).

In support of her VAWA petition, the Petitioner submitted a personal statement; a marriage certificate; two photographs; a birth certificate for her son, E-J-D-, born in 2011; a 2012 order from the , Minnesota, District Court; a residential lease for Minnesota; and banking documents. In response to a request for additional evidence from the Director, the Petitioner additionally submitted a copy of a July 2013 order from the Minnesota, District Court; a copy of a May 2009 Form G-325A, Biographic Information (biographic information sheet), signed by G-S-R-; a copy of the relative petition filed by G-S-R- on the Petitioner's behalf; and a March 2017 statement from the Petitioner's previous spouse, I-N-.

The record also contains additional relevant evidence submitted by the Petitioner in support of her prior VAWA petitions, including: two additional personal statements; two statements from A-K-L-, a friend of the Petitioner; a statement from U-K-, a friend of G-S-R-; a statement from G-B-, also a friend of G-S-R-; a diagnostic assessment of the Petitioner by K-S-, a Masters Level Licensed Marriage and Family Therapist (MA/LMFT) at the ; and an additional residential lease for the address.

On appeal, the Petitioner submits an updated personal statement; excerpted copies of three documents bearing the signature of G-S-R-; and copies of previously-submitted documents.

On *de novo* review, we find that the record as a whole, including that submitted on appeal, is insufficient to establish that the Petitioner entered into her marriage with G-S-R- in good faith. Specifically, the record contains multiple, inconsistent accounts of the Petitioner's initial meeting

and early relationship with G-S-R-, as well as conflicting evidence regarding whether they share a child in common, all of which are significant and material facts relevant to, and call into question whether, the Petitioner married G-S-R- in good faith.

In her statement submitted on appeal, the Petitioner states that she met G-S-R- at a friend's birthday party in in 2008. She explains that she was living in Michigan at the time, that she began to visit G-S-R- in and, after her son's father moved to that she took more trips to the city to be near her son and decided to move there. This account is consistent with the Petitioner's personal statement before the Director; however, it is inconsistent with other evidence in the record.

First, the diagnostic assessment by K-S- indicates that the Petitioner reported moving from Michigan to Minnesota when her son was an infant and that she met G-S-R- only upon moving to which is inconsistent with her statements that she met G-S-R- before moving to In addition, at her USCIS interview in October 2010, the Petitioner testified under oath that her prior spouse and the father of her son, I-N-, had never lived in Minnesota, which is inconsistent with her recent statement indicating that I-N- moved to sometime after she met G-S-R-.

Moreover, both the Petitioner's statement on appeal and her prior testimony are inconsistent with I-N-'s statement, which the Petitioner herself submitted in support of her VAWA petition. The statement from I-N- indicated that, between 2007 and 2011, he lived at , Minnesota. I-N- further indicated that he and the Petitioner split custody of their son but "did not live together while in the United States." The latter statement is inconsistent with other evidence in the record, including the Petitioner's testimony at her USCIS interview and the diagnostic assessment with K-S-, which establish that I-N- and the Petitioner first entered the United States together in 2002 and lived together for approximately three years before returning to Nigeria and divorcing in 2005. The statements by the Petitioner and I-N- are also inconsistent with other evidence in the record indicating that they may have resided together in as late as October 2010. We note that, in the Director's decision denying her first VAWA petition, the Petitioner was advised that USCIS records indicated that she had filed a police report in 2009 against her prior spouse, I-N-. The police report identifies both the Petitioner and I-N- by name, and indicates that they reported being husband and wife. We further note that, in the Director's request for additional evidence in support of the instant VAWA petition, the Petitioner was advised that, during a USCIS investigation conducted in January 2011, officers questioned an employee of a residential complex in who confirmed that the Petitioner had been living together with I-N- and their shared child since October 2007. This information further calls into question the credibility of the Petitioner's statements regarding her relationships with I-N- and G-S-R-, as well as the contents of the statement from I-N-.

The record likewise contains conflicting accounts of the Petitioner's claimed shared residence with G-S-R-. In her statement on appeal, the Petitioner explains that when she first moved to Minnesota, she and G-S-R- tried to find a place to live together because G-S-R- was staying with a friend and the Petitioner was not interested in living in his friend's apartment. She states that they did not have

an easy time finding a place to rent because of G-S-R-'s criminal history and poor credit. The Petitioner further states that, "[a]fter a search," G-S-R- was able to secure a rental contract at the address. This statement is inconsistent with the Petitioner's prior statements made under oath at her USCIS interview, whereby she testified that G-S-R- was living at the address when she met him, that G-S-R- told her he had lived there since 2007, and that she moved in with him at that address in March 2009. Indeed, the May 2009 biographic information sheet signed by G-S-R- in the record before the Director indicated that he had lived at the address since March 2007. These unresolved discrepancies further reduce the credibility and probative value of the Petitioner's statements, as well as the probative value of the residential lease for the address.

Finally, the record contains conflicting evidence regarding whether the Petitioner's second child, E-J-D-, is a shared child of the Petitioner and G-S-R-, which is a highly significant and material fact in the good-faith marriage determination. As a preliminary matter, and as noted by the Director, the Petitioner did not list E-J-D- on the first two VAWA petitions she submitted, nor did any of her supporting evidence indicate that she and G-S-R- had a child in common.[2] Moreover, the record contains additional evidence calling into question whether E-J-D- is a shared child of the Petitioner and G-S-R-. In her personal statement, the Petitioner asserts that she left G-S-R- in October 2010 and that E-J-D- was born eight months later. E-J-D-'s birth certificate lists no father; however, the Petitioner explains that she did not list G-S-R- as his father because she was afraid G-S-R- would be told about it and would use it to get back at her in some unspecified manner.

Before the Director, the Petitioner submitted a 2012 order from the Minnesota, District Court, which indicates that brought an action against G-S-R- to enforce state child support requirements for E-J-D-. The order indicated that the county's summons and complaint were served on both the Petitioner and G-S-R-; that a Child Support Magistrate made findings of fact, including that the Petitioner and G-S-R- are the parents of E-J-D-; and that G-S-R- is liable for paying child support. However, the probative value of this order is limited because it does not provide the basis for its factual findings, nor does it state whether G-S-R- responded to the summons and complaint or conceded paternity.[3] Instead, it provides that neither the Petitioner nor G-S-R- were present for the proceedings in question. Moreover, the record contains no evidence indicating that the Petitioner ever sought to enforce the order or otherwise obtain child support from

[2] On appeal, the Petitioner asserts that her prior counsel advised her not to disclose E-J-D-, which the Petitioner contends constitutes ineffective assistance of counsel. We note that the Petitioner did not provide this explanation before the Director, apart from assertions made by her counsel, which are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence."). In addition, insofar as the Petitioner asserts that she received ineffective assistance from her prior counsel, the record contains no evidence that she has complied with the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

[3] In contrast, the 2013 order from the Minnesota, District Court submitted by the Petitioner—in which a Child Support Magistrate made similar findings of fact regarding the shared child of the Petitioner and I-N-, her former spouse—specifies that I-N-'s paternity was established under Minnesota law because his name was listed on the child's birth certificate.

G-S-R-. Similarly, none of the affidavits submitted by friends of the Petitioner or G-S-R- mention E-J-D- and the diagnostic assessment by K-S- discusses the Petitioner's older son, but contains no mention of E-J-D-. Finally, the record indicates that the Petitioner sought several emergency *ex parte* orders for protection against G-S-R-, including one as recently as 2016, but neither her petitions nor the resulting orders reference a shared child. On her 2016 petition for an *ex parte* order for protection, the form asked at question 8: "What is your relationship to Respondent? (Check all that apply)." The Petitioner checked only the boxes indicating that she and G-S-R- were "married," "living together since 2009-2010," and had a "significant romantic relationship." She did not check the box indicating that they "[h]ave a child together." At question 11, the petition asked whether, at the present time or in the past, the Petitioner and G-S-R- were jointly involved in any family court, domestic abuse, or harassment restraining order cases, to which the Petitioner checked "yes." However, the Petitioner checked no boxes and provided no identifying information for any "current or closed court case," including cases involving custody, paternity, or child support. The Petitioner also checked no boxes indicating that she wanted any relief that would require a hearing, such as an order regarding custody, visitation, or child support for any joint children. The record similarly contains a copy of an emergency *ex parte* order for protection obtained in 2015 by the Petitioner against G-S-R-, and her petition for that order. Again, neither references a shared child despite the specific questions on the form petition that request such information. At question 5 on the 2015 petition, the Petitioner listed her older child with I-N-, but again did not list E-J-D-.[4]

In light of the above, we find that the credibility and probative value of the Petitioner's statements regarding her initial meeting and early relationship with G-S-R-, as well as her claims that E-J-D- is a shared child with G-S-R-, are significantly diminished. We have considered the other evidence of record that the Petitioner submitted to establish that she entered into her marriage with G-S-R- in good faith. However, none of the supporting evidence submitted by the Petitioner, including statements from various friends and the diagnostic assessment by K-S-, discuss E-J-D-, which calls into question their claimed personal knowledge of the Petitioner's relationship with G-S-R- and limits their probative value. Moreover, as the Director observed, the statements from friends of the Petitioner and G-S-R- contain largely vague and general language regarding their knowledge of the Petitioner's marriage to G-S-R-, and lack specific, credible, probative details that would establish her intentions in entering into marriage. Similarly, the bank documents submitted by the Petitioner indicate that she merely added G-S-R- as a "payable on death" (POD) beneficiary to a bank account she personally held, reflect an incorrect spelling of G-S-R-'s complete name, and do not show regular joint use, payment of shared bills or expenses, or other financial activity indicating that the Petitioner and G-S-R- meaningfully commingled finances.

[4] The Director made an additional finding relevant to the good faith marriage determination, observing that several documents in the record appeared to have different signatures for G-S-R-, including the lease for the claimed marital residence. The excerpted copies of three documents bearing the signature of G-S-R- submitted on appeal likewise contain variations of his signature and we are unable to discern which, if any, are true or false signatures. We need not rely upon the disparities in G-S-R-'s signatures, however, because the record is otherwise insufficient to establish that the Petitioner entered into her marriage with G-S-R- in good faith for the reasons discussed above.

Accordingly, and in light of the above, the Petitioner has not established by a preponderance of the evidence that she entered into her marriage with G-S-R- in good faith as section 204(a)(1)(A)(iii)(I) of the Act requires.

B. Shared Residence

A VAWA self-petitioner must establish that she resided with her U.S. citizen spouse during the qualifying marriage. Section 204(a)(1)(A)(iii)(II) of the Act. Residence is defined in the Act as "the place of general abode," which "means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act. Evidence of shared residence may include employment records; utility receipts; school records; hospital or medical records; deeds, mortgages, or rental records; insurance policies; affidavits; or any other relevant credible evidence. 8 C.F.R. § 204.2(c)(2)(iii).

Borrowing from the analysis above, the significant and unresolved discrepancies between the Petitioner's statements and other evidence of record significantly diminish her credibility as to, and the evidentiary weight of, her statements that she resided with G-S-R- during their marriage. In particular, the record contains no explanation for the Petitioner's inconsistent statements regarding whether G-S-R- was already residing at the claimed marital address, [redacted] when the Petitioner moved in with him, or whether this was a new residence that the Petitioner and G-S-R- found and moved into together. Moreover, the Petitioner's statements contain few probative details regarding their claimed shared residence, such as a description of their daily routines or division of household and financial responsibilities, including payment of rent and utilities. Apart from the residential lease for the claimed marital address, the record contains no utility receipts, employment records, insurance policies, or other similar evidence of shared residence, despite the Petitioner's claim that they lived together at the address for approximately one and a half years. The bank documents alone, on which G-S-R- is listed as a POD beneficiary under an incorrect spelling of his name, do not sufficiently establish that the Petitioner and G-S-R- actually resided together at the address listed on the documents. Finally, and as noted by the Director, the statements from friends of the couple similarly contain largely vague and general language regarding the claimed marital residence, but lack specific, credible, probative details that would establish shared residence. The statements likewise use almost identical language to describe different incidents which the authors claim to have witnessed at the Petitioner's shared residence with G-S-R-, raising additional doubts as to the authenticity of the documents and whether their authors in fact had personal knowledge of the Petitioner's relationship with G-S-R-.

Accordingly, and in light of the above, the Petitioner has not met her burden of establishing by a preponderance of the evidence that she shared a residence with G-S-R- as required by section 204(a)(1)(A)(iii) of the Act.

III. CONCLUSION

The Petitioner has not met her burden of establishing by a preponderance of the evidence that she entered into her marriage with her U.S. citizen spouse in good faith or that she resided with her U.S. citizen spouse as sections 204(a)(1)(A)(iii)(I) and (II) of the Act require. Accordingly, the Petitioner is not eligible for VAWA immigrant classification.

ORDER: The appeal is dismissed.

Cite as *Matter of P-D-*, ID# 1488924 (AAO Oct. 23, 2018)