U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-D-

DATE: DEC. 19, 2017

MOTION ON ADMINISTRATIVE APPEALS 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 of the Vermont Service Center initially approved the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and subsequently revoked her approval, concluding that the Petitioner did not establish that he entered into marriage with his U.S. citizen spouse, D-S-,[1] in good faith and jointly resided with her. The Petitioner filed a motion to reopen and to reconsider, and the Director denied the motions. On appeal, we affirmed the Director's motion denials and dismissed the Petitioner's appeal. We incorporate our prior decision here by reference.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence, claiming that our previous decision was contrary to law and U.S. Citizenship and Immigration Services (USCIS) policy, and that sufficient evidence establishes that he married D-S- in good faith and resided with her during the marriage.

Upon review, we will deny the motions.

I. LAW

A motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner's submission on motion contains new evidence and assertions, but does not establish legal errors in our prior decision.

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

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, 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. Revocation

Section 205 of the Act provides that a revocation of a VAWA petition may occur at any time for good and sufficient cause.

On motion, the Petitioner claims that we overlooked multiple procedural errors and policy violations leading to the revocation, and that approval of the VAWA petition should be reinstated. First, the Petitioner asserts that the adjudicating officer at his Form I-485, Application to Adjust Status or Register Permanent Residence (adjustment application) interview impermissibly questioned him about the merits of the underlying VAWA petition. Secondly, he contends that we violated internal policies articulated in USCIS Policy Memorandum PM-602-0022, *Revocation of VAWA-Based Self-Petitions (Forms I-360)* (Dec. 15, 2010), http://www.uscis.gov/laws/policy-memoranda by affirming the Director's revocation, which relied on evidence that could have been discovered prior to the time the VAWA petition was approved in 2013.[2]

With respect to the interview on the Petitioner's adjustment application, the adjudicating officer appropriately reviewed the Petitioner's eligibility for the underlying classification. A petitioner must remain eligible for adjustment of status from the time of filing through final adjudication. 8 C.F.R. §§ 103.2(b)(1) and 245.1(a); 7 USCIS Policy Manual A.6(A)(B), https://www.uscis.gov/policymanual. The Director acted consistently with the regulation at 8 C.F.R. § 205.2(a) in providing a notice of intent to revoke (NOIR) to the Petitioner outlining the basis for a possible revocation and later explaining to the Petitioner why the VAWA petition was revoked. The Director correctly applied the cited policy memorandum in that she initiated the revocation proceedings, in part, based on new evidence from the field not available at the time the VAWA petition was approved by USCIS, e.g., information obtained in 2015 during USCIS site visits to two of the Petitioner's claimed joint residences with D-S-.

The Petitioner additionally contends that we erred by switching the burden of proof back to the Petitioner, improperly weighed the evidence, and did not come to our own, independent conclusion about whether the marriage was entered into for the primary purpose of evading the immigration laws, citing to *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). In *Tawfik*, the Board of

[2] The memorandum states that the field office requesting the Director's review of a VAWA approval for possible revocation must base its request on new evidence not available at the time the VAWA petition was approved. USCIS Policy Memorandum PM-602-0022, at 1, *supra*. Contrary to the Petitioner's argument on motion, the memorandum does not preclude the use of any particular evidence to revoke approval of the VAWA petition.

Immigration Appeals considered whether the petitioner was barred from approval of her VAWA petition under section 204(c) of the Act.[3] Section 204(c) of the Act, however, was not raised by the Director and is not at issue in these proceedings.

B. Joint Residence

The Petitioner asserts on motion that the record does not contain substantial and probative evidence that he and D-S- did not reside together. The Petitioner has the burden of proving by a preponderance of the evidence that he resided with D-S- during the marriage. 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).

In our decision on appeal we discussed at length the deficiencies in the evidence. The affidavits were insufficiently detailed to show that the couple jointly resided at the three claimed residences in [redacted] and [redacted] during the marriage. The cell phone bills and life insurance records confirmed that the Petitioner and D-S- shared a mailing address but, without probative testimony, the documents did not provide sufficient probative evidence of the Petitioner's joint residence. The furniture delivery receipt showed that the Petitioner acknowledged the furniture as "received and inspected" at the [redacted] home one month prior to its actual delivery date. The USCIS investigators discovered that D-S- resided alone at the [redacted] address during the period of time that the Petitioner claimed to have resided with D-S-, and the lease on file at the office for the [redacted] address showed that the Petitioner resided with A-B-, not with D-S-, during the time of the lease. The investigators also determined that A-B- and the Petitioner purchased a vehicle together during the time of the Petitioner's claimed residence with D-S-, and listed the [redacted] address on the joint title. Additionally, the investigators found that the Petitioner submitted substantially identical leases for the [redacted] address in separate immigration proceedings, one showing D-S- as his co-tenant, and the other listing A-B- as his joint tenant, during the time of his claimed joint residence with D-S-. We analyzed the Petitioner's explanations for the discrepancies, and stated specifically why they were insufficient to overcome our concerns. The Petitioner does not address our discussion of these discrepancies on motion, which undermines the probative value of the remaining evidence of joint residence.

On motion, the Petitioner submits four additional statements from friends to establish joint residence. J-D- states that she visited the couple at the [redacted] and [redacted] residences "for drinks and a few parties" and to visit D-S- when the Petitioner was on the road. V-K- claims to have lived below the couple at the [redacted] address, attended parties at their apartment, and helped them move to their new apartment in [redacted] where he attended a housewarming party. Neither

[3] A VAWA petition may not be approved if the petitioner previously was accorded, or sought to be accorded, immediate relative status as the spouse of a U.S. citizen by attempting, conspiring, or entering into a marriage for the purpose of evading the immigration laws. Section 204(c) of the Act. An adverse finding under section 204(c) must be supported by substantial and probative evidence of such an attempt or conspiracy. 8 C.F.R. § 204.2(a)(ii).

J-D- nor V-K- describes the [redacted] apartment or provides probative details of any particular gathering or party they attended. G-S- says that he stayed overnight on the couch at the one-bedroom [redacted] apartment for a weekend in February 2011 and one night in April 2011, and that during the February visit, the Petitioner woke first and made breakfast. G-S- does not provide further probative details about the apartment, the couple's residential routines, or their shared experiences during his visits to their home. J-M- says that she went to the [redacted] apartment regularly for dinner, and describes the physical apartment as "a nice, small and cozy one bedroom apartment" with new furniture, but does not provide further probative details. None of the witnesses on motion describes the residences they visited, the couple's shared belongings, shared residential routines, or any particular social occasions. In view of the unexplained inconsistencies in the record regarding the claimed joint residences, the evidence as supplemented on motion does not establish that the Petitioner and D-S- resided together during the marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Entry into the Marriage in Good Faith

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).

On appeal, we reviewed the personal statements from the Petitioner, his family members, and friends and determined that the witnesses did not provide sufficient details regarding the Petitioner's relationship with D-S-, their courtship, wedding ceremony, shared residences, and experiences to establish that he entered into marriage with D-S- in good faith. We discussed the deficiencies in the joint bank records, the 2010 joint federal tax return, and photographs, and the discrepancies discussed above as they reflected on the Petitioner's marital intentions.

On motion, the Petitioner submits affidavits from four friends. J-D- describes the Petitioner as "a great guy who took care of [D-S-]" and they "loved each other." V-K- recounts that the Petitioner was "visibly embarrassed" when D-S- "got a little too drunk," that he "wanted to protect [D-S-] from any embarrassment," and that they moved to [redacted] to be closer to D-S-'s family. G-S- says he has "never seen [his] friend so in love with someone and talk about the future like he did with [D-S-]." J-M- states that she met the couple at church, they got together for dinner about once a month, and wanted to live in a house with a big yard and a family. None of the Petitioner's friends discusses the courtship, wedding ceremony, shared lives, or shared experiences with the couple.

On motion, the Petitioner asserts that the Director did not present evidence sufficient to establish that he did not marry D-S- in good faith and that theirs was a sham marriage. The Petitioner further argues that we erred by not requiring substantial and probative evidence, such as a sworn statement from D-S-, in deciding that their marriage was a sham from its inception. As discussed above, the

Petitioner bears the burden proving VAWA eligibility by a preponderance of the evidence. D-S-'s intentions are not relevant to whether the Petitioner intended to marry in good faith. Although the Petitioner asserts that our requirement for probative details is outside the scope of the regulations and that we erred in concluding that he has the burden of proof, he does not cite to any law or policy in support of these assertions. In addition, the Petitioner further contends that the inconsistencies articulated by the Director in the NOIR are not relevant to establish his good faith marital intentions but does not specifically address the discrepancies discussed in our previous decision.

In light of the unexplained discrepancies in the record, the evidence on motion does not overcome our determination that the Petitioner did not enter into his marriage with D-S- in good faith. Section 204(a)(1)(A)(iii)(I)(aa) of the Act.

III. CONCLUSION

Upon a full review of the evidence, the Petitioner has not established that he entered into marriage with D-S- in good faith and resided with her during the marriage. Consequently, the Director had good and sufficient cause to revoke approval of the VAWA petition.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of N-D-*, ID# 747810 (AAO Dec. 19, 2017)