



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 27612125

Date: AUG. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an 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 petition, concluding that the Petitioner was not eligible for immigrant classification, as the Petitioner married his U.S. citizen spouse while in removal proceedings, and did not establish by clear and convincing evidence that he entered into the marriage in good faith. We dismissed the Petitioner's appeal, and two subsequent combined motions to reopen and reconsider. When the Petitioner filed third combined motions to reopen and reconsider, the Director dismissed the motions, however, the Director did not have the jurisdiction to issue a decision regarding a motion on our decision. *See* 8 C.F.R. § 103.5(a)(1)(ii) (stating that the official having jurisdiction is the official who made the latest decision in the proceeding). As such, we withdraw the Director's decision issued on the third combined motions to reopen and reconsider, and while the matter before us was filed as an appeal, we will treat the matter as combined motions to reopen and reconsider and will concurrently address the evidence and statements provided with the Petitioner's two most recent filings.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

The Act bars approval of a VAWA petition if, while in removal proceedings, the petitioner entered into the marriage giving rise to the petition, unless the petitioner has resided outside the United States for a period of two years after the date of marriage or establishes by clear and convincing evidence that the marriage was entered into in good faith. *See* sections 204(g) and 245(e)(3) of the Act, 8 U.S.C. §§ 1154(g) and 1255(e)(3) (outlining the restriction on, and exception to, marriages entered into while in removal proceedings); *see also* 8 C.F.R. § 204.2(c)(1)(iv) (providing that a self-petitioner "is required to comply with the provisions of . . . section 204(g) of the Act"). Clear and convincing

evidence is that which, while not “not necessarily conclusive, . . . will produce in the mind . . . a firm belief or conviction, or . . . that degree of proof which is more than a preponderance but less than beyond a reasonable doubt.” *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966).

Acknowledging the limitations placed on petitioners in abusive relationships, evidence that the marriage was entered into in good faith may include, but is not limited to: shared insurance policies, property leases, income tax forms, or bank accounts; testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together; birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; or affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii). Petitioners are “encouraged to submit primary evidence whenever possible,” but may submit any credible evidence relevant to the VAWA petition in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). We determine, in our sole discretion, the credibility of and weight given to all of the evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

II. ANALYSIS

The Petitioner, a native and citizen of India, entered the United States without admission or parole in January 2012. He was issued a Notice to Appear and placed into removal proceedings in [] 2012. He married his U.S. citizen spouse, J-L-¹, in [] 2016. He filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in March 2017 based on a claim of battery and extreme cruelty by J-L-.

In our previous decisions, incorporated here by reference, we concurred with the Director’s determination that the Petitioner had not established by a preponderance of the evidence, or by the higher standard of clear and convincing evidence as required, that he married J-L- in good faith. We explained that the Petitioner’s personal statement lacked probative details about his intent in marrying J-L-, their courtship, details of their wedding ceremony, their personal routines after marriage, and their shared marital experiences, and that letters from the Petitioner’s friends provided limited insight into his state of mind at the time of the marriage and did not contain specific, probative details regarding their experiences with the Petitioner and J-L-. In addition, we determined that, although the Petitioner had provided some documentary evidence in support of his claim of a good faith marriage, it was insufficient given the deficiencies in his personal statement. With his first combined motions, we acknowledged updated affidavits from the Petitioner’s friends which described the difficulties the Petitioner experienced with J-L-; however, they again provided limited insight into the Petitioner’s state of mind at the time of the marriage and lacked specific, probative details regarding their

¹ We use initials to protect the identity of individuals.

experiences with the Petitioner and J-L-. We also addressed the Petitioner's claims that we did not afford enough weight to joint bank statements, gas bills, photographs, and erroneously dismissed the affidavits from his friends. We noted that this evidence was afforded some evidentiary weight but concluded that it was inadequate to establish his good faith marriage given the deficiencies in his personal statement. Further, we acknowledged the Petitioner's repeated assertion that we erred in applying the "clear and convincing evidence" standard to his petition, rather than the "any credible" standard. However, we clarified that the "any credible evidence" language in section 204(a)(1)(J) of the Act related to an evidentiary standard, as opposed to the "clear and convincing evidence" standard of proof applied in his case because he married J-L- while in removal proceedings.

In our decision on his second combined motions, we acknowledged that the Petitioner claimed that the evidence he had submitted met the "clear and convincing evidence" standard; however, we noted that he did not further articulate why the decision was incorrect based on the evidence in the record of proceedings at the time or otherwise address the deficiencies articulated in our decisions on appeal or motion. The Petitioner again contended that the Director "incorrectly disregarded submitted affidavits as being 'not . . . probative for [their] purposes,' despite having requested the affidavits as primary evidence in its [r]equest for [e]vidence." We noted that both we and the Director considered the Petitioner's evidence including his personal statement, affidavits from friends, bank statements, utility bills, and photographs, and explained why that evidence was insufficient to meet his burden of proof for establishing a good faith marriage by a preponderance of the evidence. We concluded that the evidence submitted by the Petitioner was insufficient to overcome the deficiencies in the record and did not meaningfully respond to our dismissal determinations. As such, the motions were dismissed, as the Petitioner had not established that he entered into his marriage in good faith by a preponderance of the evidence, or by the higher standard of clear and convincing evidence, as required by section 204(g) of the Act, as the Petitioner entered his marriage to J-L- while he was in removal proceedings.

With the Petitioner's third combined motions, he submits a supplemental affidavit, a hand-written receipt for one ring, an affidavit from R-A-, a copy of a canceled check, and additional photographs. In the Petitioner's supplemental affidavit, he again notes that he and J-L- met at a New Year's Eve party in December 2015 and exchanged phone numbers. He states that they went on their first date to a bar where they had drinks and got to know each other more, and they met up the next week when he brought Indian food to J-L-'s apartment. The Petitioner notes that he met J-L-'s two children during their third date where they walked around and had dinner together, and he states that this was the first time J-L- mentioned the idea of marriage to him. After this, the Petitioner introduced J-L- to friends and said that he stayed at J-L-'s place every weekend. The Petitioner notes that in April 2016, J-L- informed him that she was pregnant, and they discussed the logistics of having a child and potential names. Unfortunately, they lost the child due to a miscarriage in June 2016, and it was after this that the Petitioner stated that before they try again for a child, he would like to get married, which he claims J-L- took as a marriage proposal, which he went along with. He states that they began to discuss "more serious" topics like religion and that J-L- said she would convert to Sikhism and began visiting temple with him. The Petitioner indicates that he then told his parents about the relationship, which he was concerned about doing because they are traditional, but they gave their blessings. He states that they found an apartment together in [REDACTED] 2016, and had a civil marriage ceremony a short time later that same month. The Petitioner states that he brought roses and exchanged rings and took their vows, and that following the ceremony they went to the Sikh temple and prayed.

Following the wedding ceremony, J-L-'s daughters remained living with their grandmother but visited the couple often. The Petitioner states that he took care of all household expenses while J-L- took care of cooking, cleaning, and laundry, and notes that she cooked Caribbean food, which reminded him of Punjabi food. He states that J-L- would pack his lunch for work and leave notes taped to the containers. Finally, he says that they wanted to go on a honeymoon to India but could not afford it. He mentions that J-L- wanted to see the Taj Mahal, and that he wanted to take her to see the Sikh Holy Shrine, but the marriage did not work out as he had hoped.

In review of the other additional evidence, the receipt from the jewelry store is hand-written, and indicates the Petitioner's name, and appears to indicate that one ring was purchased. While the Petitioner mentions that he and J-L- went shopping for rings, the receipt is provided without context or explanation, as he does not mention visiting this store to purchase a ring for J-L-. The affidavit from R-A- indicates that they are the owner of a property and that they rented the first floor to the Petitioner and J-L-. R-A- states that the Petitioner and J-L- appeared happy and that two children visited them frequently. The copy of the canceled check indicates a bank account in both the Petitioner's and J-L-'s names but was previously submitted and considered. The photographs provided depict the couple together on various occasions. In review of the photographs submitted, the descriptions and dates include minimal detail, and only potentially cover a period of two months of their relationship, as not all photographs provide approximate dates. As such, they are provided minimal weight.

With the present filing, the Petitioner provides a brief addressing much of the Director's decision, which we have withdrawn, additional affidavits, and additional photographs. In the first affidavit, from M-M-, J-L-'s mother, she indicates that their relationship became "more and more serious over time" and that when J-L- told her about the Petitioner, she felt like he was someone special. M-M- notes that the Petitioner introduced J-L- to his parents and the Petitioner acted as a translator. The affidavit states that the Petitioner and J-L- moved in together in August 2016 and that J-L- seemed to be very happy, and states that the Petitioner developed a good relationship with J-L-'s children. In the second affidavit, from T-M-, J-L-'s sister, she states that she visited the Petitioner and J-L-'s apartment on several occasions and visited her home. She states that the Petitioner was a good stepfather to J-L-'s children, their relationship was very happy at the beginning, and that the Petitioner was very loving, protective, and supportive of J-L-.

In the Petitioner's brief, he contends that our prior decisions indicated that he needed to provide more details in his personal statement. In our review of the supplemental affidavit, summarized above, the Petitioner does not provide any significant additional detail regarding their courtship, details of their wedding ceremony, their personal routines after marriage, and their shared marital experiences. While the Petitioner provided some specific dates, many of the details were previously recounted with the personal statement he submitted with his VAWA petition. All the events, including their first date, when J-L- introduced him to her children, J-L-'s pregnancy and miscarriage, the events leading to their marriage, and moving in together, were all included in that statement, and are not significantly expounded upon in the supplemental affidavit. While the Petitioner now includes when he introduced J-L- to his parents and also says that he took care of the household expenses while J-L- took care of household chores (as opposed to his initial statement that they "shared household duties"), we determine that the Petitioner has not provided specific probative details to address the concerns discussed in our prior decisions. Further, as noted above, the receipt from the jewelry shop is provided

limited weight as he does provide any detail or explanation for the purchase of the ring in his affidavit. The affidavit from R-M- does not provide any specific probative details regarding the Petitioner's good faith marriage, as it only states that the couple appeared happy and that J-L-'s children visited them. The affidavits from M-M- and T-M- similarly provide basic details regarding the Petitioner and J-L-'s relationship, but do not contain substantive information to demonstrate the Petitioner's good faith marital intentions. The three photographs provided again include minimal detail, not including dates or specific locations, noting two "were taken during the course of the marriage" and the third was at J-L-'s mother's house.

As a result, we determine that we did not err in our prior conclusions that the Petitioner has not established by a preponderance of the evidence that he married J-L- in good faith, nor did he establish such by the higher clear and convincing evidence standard required as he married J-L- while he was in removal proceedings.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Regarding the motion to reconsider, the Petitioner does not cite any policy or pertinent precedent decisions that establish that our prior decision was based on an error in law or policy. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.