



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

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

In Re: 29042322

Date: DEC. 7, 2023

Appeal of Vermont Service Center 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. *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 denied the petition, concluding that the record did not establish that the Petitioner enter her marriage with her U.S. citizen spouse in good faith or resided with her spouse during the claimed marital relationship. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that the Director did not consider the evidence provided in support of the petition under the “any credible evidence” standard.

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). We review the questions in this matter *de novo*. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A VAWA petitioner must establish, among other requirements, that they entered into the qualifying marriage to the U.S. citizen spouse 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 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)(i), (vii).

A VAWA petitioner must also establish that they have resided with their U.S. citizen spouse. Section 204(a)(1)(A)(iii) of the Act. Section 101(a)(33) of the Act provides that, as used in the Act, “[t]he

term ‘residence’ means the place of general abode . . . [a person’s] principal, actual dwelling place in fact, without regard to intent.” 8 U.S.C. § 1101(a)(33). Evidence showing that the petitioner and the abusive spouse resided together may include employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, affidavits, or any other type of relevant credible evidence of residency. 8 C.F.R. § 204.2(c)(2)(i), (iii). Although we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a citizen and national of Ukraine, came to the United States as a non-immigrant visitor in April 2017 and has not departed. She married T-W-¹, a U.S. citizen, in [] 2017 and filed the current VAWA petition based on that relationship.

Prior to filing her VAWA petition, T-W- filed a Form I-130, Petition for Alien Relative (I-130), seeking to classify the Petitioner as the spouse of a U.S. citizen. USCIS performed an administrative site visit at the claimed joint residence of the Petitioner and T-W- in November 2019. The claimed joint residence is a one bedroom, one bathroom apartment. During the course of the site visit the officers determined that T-W- did not have any of his belongings in the residence. When asked why W-T- did not have any belongings in the residence the Petitioner stated that he takes his clothes with him every day for work. The Petitioner did not indicate that she and T-W- had separated or that they had an argument of some kind that led to their temporary separation. In her statement to the Director, the Petitioner claims that T-W- had left the marital residence prior to the site visit but that due to the demeanor of the interviewers and her hope for reconciliation, she did not tell the investigators.

Based in part on the administrative site visit, and on the discrepancies in the evidence provided, the Director determined that the Petitioner did not provide sufficient probative details regarding her relationship to establish that she resided with T-W- or married him with the intent of establishing a life together. On appeal, the Petitioner provides a brief from her attorney contesting the Director’s decision. The Petitioner states that her marriage should be judged based on the intent at inception rather than the events that led to its ultimate end and that the evidence provided should be viewed under the “any credible evidence” standard.

Upon de novo review, the evidence provided by the applicant is not sufficient to establish that she entered her relationship with T-W- in good faith. On appeal, the Petitioner argues, through her attorney, that her statement to the Director provided sufficient details of her relationship to establish that she entered her marriage in good faith. However, the Petitioner’s statements regarding her initial meeting, decision to get married and the daily routine of her life with T-W- lack the probative detail necessary to establish that she entered her relationship in good faith.

In her statement to the Director, the Petitioner claimed that she and T-W- met at an un-named club and described her feelings for T-W- and thoughts about their relationship. The statement did not discuss any tangible events or moments in their relationship prior to their marriage such as the

¹ We use initials to protect the privacy of individuals.

proposal, wedding ceremony, interactions with the Petitioner's family, or any other details of their dating life. Similarly, the Petitioner wrote about her married life with T-W- only to describe the instances of abuse but she did not provide probative details of their day-to-day routine or relationship. The Petitioner has provided no additional statements on appeal. Similarly, the psychological assessment provided to the Director describes instances of abuse in the relationship but does not describe the details of their courtship or married life outside of the alleged abuse.

The Petitioner also provided photographs of herself and T-W- to the Director. On appeal, the Petitioner's attorney states that the Director erred when they determined that the photographs did not contain captions or indications of what was happening in the photos because the back of each photograph contained a description. A review of the evidence provided shows that, while some of the photographs include dates, there are no captions or statements regarding where they were taken or their significance in the relationship of the Petitioner and her spouse.

The Petitioner also provided affidavits from I-Y- and D-A-. The affidavits describe specific instances of abuse witnessed by the affiants, however, they do not discuss if they socialized with the Petitioner and her spouse outside of these situations or if they were aware of their relationship through personal experience. As such, the affidavits do not provide any insight into the Petitioner's intent in entering her marriage with T-W-.

The Petitioner also provided copies of bank statements from Wells Fargo as evidence of her intent in marrying T-W-. A review of the account history indicates that only one card was used for the account and there were no withdrawals showing payment of rent or utilities. Similarly, there were not regular deposits from an employer or checks that would indicate wages. The statements from the [redacted] Department of Water and Power [redacted] provided as evidence offer various names for the people living at the apartment. The January 2018 bill the Petitioner provided to the Director contains the name A-D-E- and is addressed to the Petitioner's place of claimed residence. A-D-E- has never been mentioned as someone who resided with the Petitioner and T-W-. The Petitioner's attorney states on appeal that A-D-E- was listed on the statement as a mistake from the utility company and that the petitioner had paid the balance. No evidence was submitted to support this assertion. In addition, the [redacted] issued a "closing bill" in October 2018. The statement indicated that the responsible party had requested service terminated at that location. Despite claims that she resided in the apartment for at least one more year, the Petitioner did not provide any utility bills from [redacted] beyond October 2018. In addition, there are months where the name of the Petitioner's mother, V-M-, appears on the utility statements and months where it does not, seemingly at random. The Petitioner has not explained why the names on the utility statements continually change from month to month.

The Director also indicated that as part of an investigation into the Petitioner's relationship with T-W- USCIS contacted [redacted] stated that as part of their background check of T-W- when he attempted to rent an apartment in [redacted] California, they ran a tenant screening report. The report indicated that the Petitioner had been paying rent for an apartment in [redacted] between October 2017 to August 2019. On appeal, the Petitioner's attorney states that the address referenced by the Director belongs to the Petitioner's father-in-law as indicated during the I-130 interview. USCIS records do not indicate that the Petitioner's current attorney was present during the I-130 interview and the Petitioner did not reference the interview in her statement to the Director. As referenced above, the Petitioner's attorney makes multiple statements

on appeal regarding evidence, the Petitioner's frame of mind, and details of the relationship that are unsupported by the record. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Therefore, we will only consider the arguments of the Applicant's attorney insofar as they relate to evidence available in the record.

We acknowledge the submission of the rental insurance plan, lease agreement for the claimed marital residence, and additional utility bills, however, given the unresolved discrepancies in the evidence above and the lack of probative details in the Petitioner's statement, we have determined that the Petitioner has not met her burden of proof to establish eligibility for VAWA classification.

As argued by the Petitioner, the determination of whether a petitioner has entered their marriage in good faith is a question of intent at the time the marriage was entered. *See Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983), *see also Damon v. Ashcroft* 360 F. 3d 1084, 1088 (9th Cir. 2004). In the present case, the Petitioner has not provided sufficient detail regarding the inception of her marriage to T-W- or the circumstances which led them to marry to establish her intent in entering the marriage. The Petitioner claims to have been married to and lived with T-W- for close to two years but has not provided specific information about their courtship, the marriage ceremony, or marital relationship aside from her claims of abuse. As such, the Petitioner has not demonstrated, by a preponderance of the evidence, that she married T-W- in good faith. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (describing the petitioner's burden under the preponderance of the evidence standard and explaining that in determining whether a petitioner has satisfied their burden, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence). As mentioned above, although we must consider any credible evidence relevant to the VAWA petition and do not require specific documents to support the Petitioner's claim, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner has not met her burden of proof to establish that she married her U.S. citizen spouse in good faith. Consequently, she has not demonstrated eligibility for the requested immigrant classification as an abused spouse of a U.S. citizen under the VAWA provisions. Because the Petitioner is not eligible for the requested immigrant classification on this basis alone, we need not address at this time whether he meets the remaining eligibility criteria for such classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.