U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18869558

Date: April 12, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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 remand the appeal.

I. LAW

A petitioner who is the spouse or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii) of the Act. The petitioner must also establish that they resided with the abusive spouse. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D). The Act defines a residence as a person's general abode, which means their "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Although there is no requirement that the petitioner reside with their abusive relative for any particular length of time, the petitioner must show that they in fact resided together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v).

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). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). USCIS determines, 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).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Venezuela, married G-A-,[1] a U.S. citizen, in [redacted] 2018. She filed the instant VAWA petition in January 2019 based on this marriage.

The Director denied the petition, determining that the Petitioner had not established that she resided with G-A-, as required, because she had not demonstrated that she and G-A- shared a "principal dwelling together. . . during the qualifying relationship." The Director acknowledged the Petitioner's explanation that she resided with G-A- from January 2014 until December 2017 in Massachusetts, at which time G-A- moved to California to look for work, and that the Petitioner planned to join him. However, the Director noted that the record indicated that following their [redacted] 2018 wedding in Massachusetts, G-A- returned to California while the Petitioner remained in Massachusetts.

Subsequent to the issuance of the Director's decision, U.S. Citizenship and Immigration Services (USCIS) issued policy guidance clarifying that "USCIS no longer requires [a VAWA] self-petitioner to have resided with the abuser during the qualifying relationship." *See* 3 *USCIS Policy Manual* D.2(F), https://www.uscis.gov/policy-manual.[2] In light of this clarification, we will remand the matter to the Director to determine whether the Petitioner has established that she resided with G-A-, as well as whether she has satisfied the remaining eligibility requirements for immigrant classification under VAWA.

ORDER: The decision of the Director is withdrawn, and the matter is remanded for entry of a new decision consistent with the foregoing analysis.

[1] We use initials to protect the privacy of individuals.

[2] The Policy Manual states that "USCIS implemented this new interpretation on February 10, 2022 given that several federal courts have recently held that the statutory language does not require shared residence during the qualifying relationship. *See Dartora v. U.S.*, No. 4:20-CV-05161-SMJ (E.D.W.A. June 7, 2021). *See Bait It v. McAleenan*, 410 F. Supp. 3d 874 (N.D. Ill. 2019). *See Hollingsworth v. Zuchowski*, 437 F. Supp. 3d 1231 (S.D. Fla. 2020)." 3 *USCIS Policy Manual* D.2(F), at n. 117.