U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20680596

Date: JUN. 23, 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). The matter is now before us on appeal. Upon *de novo* review, we will dismiss 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 petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, a petitioner must establish that they have 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 a VAWA petitioner reside with their abuser for any particular length of time, a petitioner must show that they did, in fact, reside together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). 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).

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). U.S. Citizenship and Immigration Services (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

In this case, the Petitioner married E-V-[1], a U.S. citizen, in [redacted] 2016. In Part 10 of his VAWA petition, the Petitioner indicated that he lived with E-V- from June 15, 2016, to January 2018 in an apartment located in [redacted], New Jersey. In his February 2019 declaration, the Petitioner asserted that he and E-V- resided together during their marriage at the address provided in the VAWA petition.

The Director issued a request for evidence (RFE), stating, among other things, that the evidence did not establish that the Petitioner and E-V- had resided together after marriage. Specifically, the Petitioner's affidavit was very brief and did not include probative details to corroborate his claim of shared residence with E-V-. The Director sought documentation that the Petitioner resided with his spouse, providing examples of evidence that may establish the couple's shared residence.[2] In response to the Director's request pertaining to evidence of joint residence, the Petitioner submitted a statement asserting that he lived with E-V- "for a year," but the apartment number provided in the statement differed from the apartment number listed on the VAWA petition. The Petitioner also submitted a copy of a photograph with the caption "In the apartment when we were together" and a copy of a transcript from the Internal Revenue Service for the tax period of December 2017, detailing both the Petitioner's and E-V-'s name and status as "married filing joint"; notably, the transcript provided a different address for the Petitioner and A-V- than the one provided in the VAWA petition. Copies of bills provided by the Petitioner referenced only the Petitioner at the address listed in the VAWA petition. The Petitioner also provided a receipt from the Office of the Municipal Clerk, [redacted] from December 9, 2016, and November 17, 2016, and a Certificate of Marriage, indicating an application date of November 17, 2016, referencing both the Petitioner and E-V- and their address as the one listed on the VAWA petition; notably, these documents pertained to activity occurring prior to the Petitioner's marriage to E-V-.

The Director denied the petition, finding, in pertinent part, that the Petitioner had not established joint residence with E-V-. Specifically, the Director noted that the Petitioner's statements lacked details, such as physical features of the residence, daily routines, or any other probative information to demonstrate that the Petitioner and E-V- shared a residence. Most notably, the Director noted that the apartment number mentioned in the Petitioner's statement that was submitted in response to the RFE was different than the apartment number listed on the VAWA petition. The Director also noted that the psychological evaluation did not provide probative details to establish that the Petitioner and E-V- resided together. The Director also found that pieces of mail addressed solely to the Petitioner at the address provided on the VAWA petition did not suffice to establish a shared residence with E-V-. Finally, the photographs and two cashiers receipts, without more, did not establish shared residence.

On appeal, the Petitioner submits a statement and again asserts that he resided with E-V- at the address referenced in the VAWA petition and maintains that he and E-V- "did not have many things in common because in this country I did not have much experience how bills were handled and I only

[1] We use initials to protect the identities of the individuals in this case.
[2] The Director also requested additional evidence to establish: a qualifying relationship, a good faith marriage between the Petitioner and E-V-, battery or extreme cruelty by the U.S. citizen spouse, and the Petitioner's good moral character.

complied with giving her all the money that I worked because she demanded it." He also maintains that he let E-V- handle the banking.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision.").

The arguments submitted by the Petitioner on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to establish that the Petitioner resided with E-V-. As noted above, "residence" means a person's principal, actual dwelling place, without regard to intent. Section 101(a)(33) of the Act. The preamble to the 1996 interim rule, which confirmed that this definition of residence is binding for VAWA self-petitioners, specifies that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere." Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996).

Here, the record does not show that E-V-'s principal, actual dwelling place was with the Petitioner. The Petitioner's statements are general in nature, lack specific dates or details, and do not provide any description of the actual residence evincing the Petitioner's life there with E-V-. Further, while the Petitioner maintained that he resided with E-V- from June 15, 2016, to January 2018, his statement in response to the Director's RFE stated that he lived together with E-V- "for a year." Moreover, no explanation is provided for why the Petitioner, in his statement in response to the Director's RFE, provided a different apartment number than the one provided in the VAWA petition. Nor has the Petitioner provided an explanation for the different address to that listed on the VAWA petition for the Petitioner and E-V- on the Internal Revenue Service's December 2017 transcript. The Petitioner has not established joint residence with E-V- as the Act and regulation require, and we lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). *See* section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D).

The Director further determined that the Petitioner had not demonstrated that he married E-V- in good faith, that he had been battered or subject to extreme cruelty perpetrated by his U.S. citizen spouse, and that he is a person of good moral character, as required by section 204 (a)(1)(A)(iii) of the Act. As the Petitioner's inability to establish that he resided with E-V- is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

In conclusion, the Petitioner has not established that he resided with his U.S. citizen spouse. Consequently, he has not demonstrated that he is eligible for immigrant classification under VAWA. The petition will therefore remain denied.

ORDER: The appeal is dismissed.