U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17245814

Date: MAR. 21, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is 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 under VAWA 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 their spouse. Section 204(a)(1)(A)(iii) of the Act. Among other requirements, a VAWA 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 in fact resided together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). 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).

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 its 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 Petitioner is a native and citizen of Vietnam who last entered the United States in August 2016 as visitor. In [redacted] 2017 she married a U.S. citizen, C-M-P-[1], with whom she claims to have resided from [redacted] until July 2017, and she filed her VAWA petitioner in September 2018. With the petition and in response to the Director's request for evidence, she submitted a personal affidavit, third-party affidavits, a copy of a text message from C-M-P-, a psychological evaluation, financial records, civil documents, and photographs.

In denying the VAWA petition, the Director determined that the record did not contain satisfactory evidence to demonstrate that the Petitioner shared a residence with C-M-P- as her principal, actual dwelling. The Director referred to section 101(a)(33) of the Act that defines residence as the principal, actual dwelling place without regard to intent and that it is not temporary or brief, but the place of general abode. The Director referred to the Petitioner's affidavit, those of her aunts, and the psychological evaluation to conclude that evidence indicated the Petitioner stayed three days a week with C-M-P- while maintaining her aunt's house as her primary residence. The Director also noted that the Petitioner's 2017 tax transcript contained her aunt's address. The Director acknowledged the Petitioner's contention that she considered C-M-P-'s apartment her primary residence but reiterated that intended domicile is distinguished from an actual place of abode and that the Petitioner's actual place of abode was her aunt's residence.

On appeal, the Petitioner, through counsel, concedes that she lived with her aunt but contends it was not her primary dwelling. She maintains that she wanted to stay in the apartment with C-M-P- as her marital home but was prohibited by his abusive behavior where he treated his dog better than she and her daughter. The Petitioner argues that there is no requirement in statute or regulation for a particular length of time that she must have resided with C-M-P- and that even residence for one second is sufficient to be eligible for the benefit under the Act. The Petitioner recounts her aunt's affidavit that she and her daughter could not live at the marital home because it was only a one-bedroom apartment so the Petitioner would stay a few days at each residence. She refers to the psychological evaluation that indicated she lived with her aunt three days a week, but every morning went to the apartment to cook and clean. The Petitioner argues that at minimum she resided at the apartment when she first moved in, intending to remain, but that because of the state of the apartment and C-M-P-'s abusive treatment she decided to float between the apartment and her aunt's home.

In her affidavits below the Petitioner described meeting C-M-P- and deciding to marry, but because his apartment was small, he wanted her and her daughter there only half the week. She described first going to the apartment after their wedding and finding it a mess with clothing, beer cans, and garbage on the floor, leftover food still on plates, and mouse droppings. The Petitioner claimed that C-M-P- did not give her an apartment key and would often send her back to her aunt's house. She indicated that she was at the apartment three days and two nights per week when she would cook and clean, and she described C-M-P- as drinking, smoking, and watching television. The Petitioner claimed that she purchased items for the apartment but was not there more often due to C-M-P-'s behavior and treating his dog better than she and her daughter.

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

Upon review of the record, we agree with the Director that the Petitioner did not establish shared residence with C-M-P- as she has not shown by a preponderance of the evidence that his apartment was her principal dwelling. The Petitioner concedes she lived between the apartment and her aunt's home and describes the apartment as too small for her and her daughter, but she has not provided sufficient evidence that she at any point established the apartment as her primary residence. She details the conditions in which she found the apartment and states generally that she purchased items for the apartment and regularly cleaned it, but otherwise does not describe the apartment or detail her routine there. The Petitioner provided affidavits from herself and her aunt but beyond those statements, which primarily describe her spouse's behavior, she has not offered evidence as described above to demonstrate that she and her spouse resided together with his apartment as her primary residence. Further, she does not discuss ending living arrangements with her aunt, moving her belongings from her aunt's house to the apartment, or what items she purchased to establish her residence there, nor does she provide any other facts that her principal abode was with her spouse. On appeal, the Petitioner refers to already submitted evidence and argues the Director erred, but she provides no additional evidence or insight into her residence with C-M-P. Therefore, the Petitioner has not overcome this ground of the Director's denial and has not established, by a preponderance of the evidence, that C-M-P-'s apartment was her principal, actual dwelling place, despite her intention to reside there. Consequently, the Petitioner has not established that she is eligible for immigrant classification under VAWA.

As the Director determined, the Petitioner has not demonstrated by a preponderance of the evidence that she resided with her U.S. citizen spouse. Consequently, she has not demonstrated that she is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.