U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23404793

Date: DEC. 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 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 before us on appeal. On appeal, the Petitioner submits a brief and asserts her eligibility for the classification sought.[1] We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, among other requirements, that they entered into the marriage with a United States citizen spouse in good faith, that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse, and that they resided with the abusive spouse. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). 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, 375-376 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

In May 2019, the Petitioner, a native and citizen of the Dominican Republic, filed her VAWA petition based upon her marriage to J-N-, her U.S. citizen spouse. The Director denied the petition, concluding that the Petitioner had not established her shared residence with J-N-, that she was battered or subjected

[1] The brief was prepared by counsel who represented the Petitioner in the underlying proceeding. However, the record does not include a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, as required. 8 C.F.R. §§ 103.3(a)(2)(v)(A)(*2*), 292.4(a). We therefore will treat the Petitioner as self-represented.

to extreme cruelty by J-N- or demonstrated her good faith marital intentions, as required. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

On appeal, the Petitioner offers a brief and asserts that the evidence in the record below establishes by a preponderance of the evidence that she resided with J-N-, her good faith marital intentions, and that she was subjected to extreme cruelty by J-N-. Upon de novo review of the record in its entirety, the Petitioner has not established by a preponderance of the evidence that she resided with J-N-.

The Petitioner attested on her VAWA petition that she resided with J-N- from March 2017 to August 2018, and that their last shared residence was in [redacted] WY. The Petitioner asserts on appeal that the evidence in the record below—specifically her marriage certificate, a Form I-797C, Notice of Action, her airplane ticket receipt, a photocopy of a bankcard that J-N- provided to her, and J-N-'s bills—together establish her joint residence with him in [redacted] In the Petitioner's personal statement, which she provides in the record below, she states that she moved in with J-N- at the [redacted] WY address in July 2018. Although the marriage certificate below lists the [redacted] address, it also reflects that J-N- and the Petitioner married in 2017, prior to when she stated in her affidavit that she moved in with J-N-. Similarly, the Form I-797C, which the Petitioner asserts demonstrates her joint residence because it was sent to the [redacted] address, is dated February 2018.[2] The Petitioner does not explain on appeal how either the marriage certificate or the Form I-797C, both dated prior to when she states that she moved in with J-N-, demonstrate her shared residence with him.

The Petitioner's air travel receipt, dated August 12, 2018, lists the [redacted] address, and is for travel on August 14. However, the Petitioner explains in her personal statement below that on August 12, she left her residence with J-N- and moved into a shelter. Documentation from the shelter reflects that the Petitioner resided there from August 12 until August 14, at which time an advocate transported her to the airport. On appeal, the Petitioner does not explain how this air travel receipt, dated on the day that she states she left her residence with J-N-, establishes her joint residence with him, and it is unclear from the record whether she resided with him after August 14.

The photocopy of the Petitioner's bankcard in the record below, which she explains that J-N- secured for her, does not include an address or otherwise indicate that she resided with him. Similarly, the undated copy of J-N-'s bill below does not contain an address or otherwise show their joint residence. We therefore afford these documents limited evidentiary weight in establishing that the Petitioner jointly resided with J-N-. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (providing that USCIS will consider any credible evidence, but that the weight that USCIS gives this evidence lies within USCIS' sole discretion).

We note that the copy of J-N-'s paystub, dated July 2018, lists the [redacted] address, providing some evidence that J-N- resided at that address at the same time as the Petitioner. However, when considered with the record in its entirety, the paystub is insufficient to demonstrate, by a preponderance of the evidence, that Petitioner shared a residence with J-N- as she asserts.

[2] We note that the Form I-130, also in the record below, indicates that the Petitioner resided in the Dominican Republic at the time of filing, and not with J-N- at the [redacted] address. The record further reflects that J-N- withdrew this Form I-130 in September 2018.

For the foregoing reasons, the Petitioner has not satisfied her burden to demonstrate, by a preponderance of the evidence, that she shared a residence with J-N-, as required at section 204(a)(1)(A)(iii)(II)(dd) of the Act. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her good faith marital intentions and her battery or subjection to extreme cruelty by J-N-. *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).

On appeal, the Petitioner has not demonstrated, by a preponderance of the evidence, she resided with her U.S. citizen spouse. She therefore has not established her eligibility for VAWA immigrant classification under section 204(a)(1)(A)(iii) of the Act.

ORDER: The appeal is dismissed.