U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17250365

Date: February 24, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

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 (Director) 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. The Administrative Appeals Office (AAO) reviews 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.

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 record reflects that the Petitioner, a native and citizen of Israel, married A-R-,[1] a U.S. citizen, in [redacted] 2016. In February 2017, A-R- passed away. The Petitioner filed the instant VAWA petition in October 2017 based on this marriage.[2]

The Director denied the VAWA petition, determining, among other findings, that the Petitioner had not established that he resided with A-R-.[3] The Petitioner has not overcome this determination on appeal.

In the record before the Director, the Petitioner stated on his Form I-360 that he and A-R- resided together from [redacted] 2016 until A-R-'s passing in February 2017 at a residence on [redacted] Street in [redacted] California. As evidence of their shared residence, the Petitioner provided a marriage certificate, car purchase receipt, and Wells Fargo bank statements containing the [redacted] Street address, as well as photos of the Petitioner and A-R- together. During a March 2017 USCIS interview, the Petitioner stated that he and A-R- lived together on [redacted] Street from mid- to late April 2016 until her death, that she had not lived anywhere else since April 2016, and that no one else lived with him. In an August 2019 personal statement, the Petitioner claimed that an individual named M-P- subleased the [redacted] Street apartment to him and A-R- and that he eventually entered directly into a lease with the landlord, J-G-. The Petitioner explained that A-R- worked 40 minutes away from home and often stayed at a friend's house for the night. The Petitioner also submitted: a written statement from M-P- stating that the Petitioner and A-R- subleased the [redacted] Street apartment in [redacted] 2016, at which time M-P- moved out; a written statement from J-G- stating that he had known the Petitioner for a couple of years and that the Petitioner was the tenant at the [redacted] Street address; and a written statement from a neighbor, R-M-, stating that he had seen the Petitioner's wife coming to and from the [redacted] Street address.

The Director acknowledged this evidence, but explained that it conflicted with other evidence in the Petitioner's administrative record. Specifically, A-R-'s death certificate from the [redacted] California Health Care Services Agency lists as her address a residence on [redacted] Court in [redacted] California. In addition, the record reflects that during an April 2017 interview between USCIS officials and L-Y-, who is described as A-R-'s friend and roommate, L-Y- stated that she had moved into the [redacted] Court residence with A-R- and A-R-'s boyfriend—someone other than the Petitioner—in July 2016. L-Y- explained that she met the Petitioner one time, briefly, when he came to drop off

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

[2] Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, a self-petitioning spouse whose U.S. citizen spouse dies before they file the VAWA petition remains eligible to file a VAWA petition for two years after the death of the spouse.

[3] The Director further determined that the Petitioner had not demonstrated that he married A-R- in good faith or that she subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(aa), (bb) of the Act. As the Petitioner's inability to establish that he resided with A-R- is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on these issues. *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).

mail, and that after the death of A-R-, she helped A-R-'s family clean out A-R-'s belongings from the [redacted] Court residence. Moreover, during a July 2017 interview with USCIS officials, J-G-, the landlord, attested that he did not know the Petitioner or A-R-. J-G- provided copies of the leases for the [redacted] Street address during the time period of the claimed shared residence and stated that subleasing was not allowed. The record also shows that USCIS officials met with neighbors of the [redacted] Street address in July 2017, and that they did not recognize a photo of A-R-. However, neighbors of the [redacted] Court address, whom USCIS officials likewise visited in July 2017, recognized A-R- and confirmed that she had lived there, but did not recognize the Petitioner. In addition, the record reflects that the [redacted] Police Department, which investigated the death of A-R-, related to USCIS officials that there was no evidence that A-R- had ever resided at the [redacted] Street address.

In the decision denying the VAWA petition, the Director determined that the Petitioner had not satisfied his burden to demonstrate that he and A-R- resided together due to unresolved, significant, and material discrepancies in the record. Specifically, the Director explained that the Petitioner had not explained why the [redacted] Court address appeared on A-R-'s death certificate and had not provided details about the claimed shared residence on [redacted] Street. The Director also determined that the Petitioner had not addressed the discrepancy between his claim that A-R- resided with him and L-Y-'s assertion that A-R- had resided on [redacted] Court and the Petitioner knew the address. The Director afforded limited weight to the written statements of J-G- and M-P- regarding the sublease by the Petitioner and A-R- at [redacted] Street because they were unnotarized and conflicted with the sworn statement J-G- made to USCIS officials during the July 2017 interview in which he denied knowledge of the Petitioner and A-R-. The Director also afforded limited weight to other record evidence, as the written statement of R-M- did not provide any probative detail to establish that he knew A-R-,[4] the bank statements listing A-R-'s name at the [redacted] Street address conflicted with J-G-'s testimony that he did not know of A-R, and the photographs did not indicate that the Petitioner and A-R- actually resided together.

On appeal, the Petitioner provides an updated affidavit stating that he and A-R- did not really know the neighbors at [redacted] Street as there is not much interaction with neighbors. He further provides an affidavit from J-G- from December 2020 stating that he has known the Petitioner since 2017 when he became a tenant at his property, that he was aware of and fine with the Petitioner's sublease with M-P-, and that he has never had any issues with the Petitioner. The Petitioner reiterates his assertion that he resided with A-R- and avers that he provided ample credible evidence to support his claim.[5] He contends that the Director unduly emphasized as discrepant the appearance of the [redacted] Court address on the death certificate, of which A-R- had no control by virtue of her being deceased, and that the Director gave undue weight to alleged conversations with USCIS officials from July 2017 for which USCIS did not provide sworn transcripts or testimony.

Upon *de novo* review, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *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) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted

[4] Although not noted by the Director, the record also reflects that during a July 2017 interview between USCIS officials and R-M-, R-M- stated that he did not recognize A-R- and did not recall her coming and going from the neighborhood.

[5] The Petitioner further submits an updated psychological evaluation on appeal; however, this document does not appear to be provided in support of the Petitioner's claim that he resided with A-R-, nor does it substantiate such claim.

and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The arguments and evidence submitted by the Petitioner on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to establish by a preponderance of the evidence that he resided with A-R-. As an initial matter, we afford limited weight to the affidavit of J-G- due to the discrepancy between his prior written statement and sworn testimony with USCIS. However, even if its contents are true, J-G-'s affidavit is not probative regarding whether the Petitioner resided with A-R-, as it does not specify when in 2017 J-G- became acquainted with the Petitioner, in relation to the death of A-R- in February 2017, and J-G- does not state that he ever knew A-R-. Furthermore, the Petitioner's affidavit lacks additional details about the claimed shared residence, and his statement that he and A-R- did not interact with their neighbors at the [redacted] Street address does not overcome the numerous, unresolved discrepancies in the record and multiple, sworn statements to USCIS indicating that A-R- did not actually reside at [redacted] Street with the Petitioner. For this reason, we also disagree that the Director unduly emphasized the address on the death certificate as discrepant, as sworn testimony from several individuals during interviews with USCIS officials further indicates that A-R- resided at [redacted] Court prior to her death and casts significant doubt on the Petitioner's claim that she resided with him at [redacted] Street.

The Petitioner next contends that USCIS afforded too much weight to alleged conversations involving USCIS officials from July 2017 for which USCIS did not provide sworn transcripts or testimony. However, the record shows that the Petitioner received sufficient notice of the derogatory information upon which the Director's decision was based in a July 2019 notice of intent to deny (NOID) and had an opportunity to rebut that information, as 8 C.F.R. § 103.2(b)(16)(i) requires. A petitioner's immigration record may include documents obtained during the course of the Department of Homeland Security's investigation of the petitioner. We review this evidence to determine if it impacts a petitioner's eligibility for the benefit they are seeking. If the information, as in this case, results in an adverse decision, USCIS is required to advise the petitioner of the derogatory information of which the petitioner is unaware and must provide the petitioner with an opportunity to rebut the information before the decision is issued. 8 C.F.R. § 103.2(b)(16)(i). USCIS is not required to provide a petitioner with an exhaustive list or documentation of the derogatory information as long as it advises the petitioner of that information and provides the petitioner with an opportunity to respond. *See Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) only requires the government to make a petitioner "aware" of the derogatory information used against them); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) does not require USCIS to exhaustively list all information found regarding marriage fraud and notice of intent to deny (NOID) gave plaintiffs sufficient notice and opportunity to respond to derogatory information). *See also Mangwiro v. Johnson*, 554 Fed.Appx. 255, 261 (5th Cir. 2014) (concluding that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide documentary evidence of the [derogatory] information, but only sufficient information to allow the petitioners to rebut the allegations"); *Diaz v. U.S. Citizenship & Immigration Servs.*, 499 Fed.Appx. 853, 855-56 (11th Cir. 2012) (concluding that 8 C.F.R. § 103.2(b)(16)(i) "only require[s] that a petitioner be advised of the derogatory information that will be used to deny the petition and be given the opportunity to respond"); *Melendez v. Dept. of Homeland Security*, No. 6:15-cv-47-Orl-22GJK, 2016 WL 3675468, at *6 (M.D. Fl. June 22, 2016) (finding that the "plain language" of the regulation did "not support Plaintiffs argument that USCIS was required to produce documentary evidence of the derogatory information it

relied on."). In the instant case, the NOID provided ample notice of the derogatory information ultimately relied upon in the denial, and the Petitioner was afforded a sufficient opportunity to respond.

Finally, the Petitioner claims that USCIS violated provisions regarding disclosure of information at 8 U.S.C. § 1367 that were designed to protect victims of spousal abuse by speaking with numerous, unauthorized third parties, because USCIS was "prohibited from disclosing any information to anyone other than a few people allowed in the Department [of Homeland Security]." This argument appears to relate to the Director's statement in the NOID informing the Petitioner that an interview conducted with A-R-'s sister, A-F-, did not violate 8 U.S.C. § 1367(a)(1)(B),[6] because A-F- never resided with the Petitioner and A-R-. Although we take the Petitioner's allegation seriously, he has not substantiated it, as he has not specified which section of 8 U.S.C. § 1367 he claims USCIS violated, and the record does not otherwise indicate that such violation occurred.

As previously stated, a petitioner must establish that they meet each eligibility requirement by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (explaining that to satisfy this burden, petitioners must show that their claims are "more likely than not" or "probably" true). Here, the record contains unresolved, significant, and material discrepancies as well as considerable evidence suggesting that A-R- resided at another address during the period of claimed shared residence. As such, the Petitioner has not demonstrated by a preponderance of the evidence that he resided with his U.S. citizen spouse. Consequently, the Petitioner has not demonstrated that he is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.

[6] This provision prohibits USCIS from making an adverse determination of admissibility or deportability of an individual under the Act based on information furnished solely by a member of the abusive "spouse[] or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consent to or acquiesced in such battery or cruelty…" 8 U.S.C. § 1367(a)(1)(B).