U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17739097

Date: JUL. 08, 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, K-W-F-[1], under the Violence Against Women Act (VAWA) provisions codified at the Immigration and Nationality Act (the Act) 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 Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the record did not establish that the Petitioner resided with her U.S. citizen spouse as required. On appeal, the Petitioner submits a brief and new evidence and reasserts that she resided with her spouse and has otherwise established her eligibility.

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.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates, among other requirements, that they were battered or subjected to extreme cruelty perpetrated by the spouse and have resided with the spouse. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), provides that, as used in the Act, "[t]he term 'residence' means the place of general abode . . . [a person's] principal, actual dwelling place in fact, without regard to intent."

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 given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[1] Initials are used throughout this decision to protect the identities of the individuals.

II. ANALYSIS

The Petitioner, a native and citizen of Jamaica, filed her VAWA petition in November 2018 based upon her [redacted] 2014 marriage to K-W-F-. The Director denied this petition, concluding that the Petitioner had not established that she resided with K-W-F-, as required pursuant to section 204(a)(1)(A)(iii) of the Act. The Director's decision acknowledged receipt of the Petitioner's personal statements, bank statements, and a retirement account statement. The Director noted, however, that in a supplemental statement, the Petitioner indicated that she remained in New York after her marriage because of her job and would go to visit her spouse in Florida but that her spouse began to pressure her to move to Florida. The Director also referenced supporting letters in the record that similarly indicated that the Petitioner would travel to Florida to visit K-W-F-, or that K-W-F- would travel to New York to visit her. Based upon these statements, the Director concluded that although the record showed that the Petitioner visited her spouse at his Florida residence, her visits were not sufficient to establish that her spouse's home was her actual "residence" as that term is defined by the Act. *See* Section 101(a)(33) of the Act; 8 U.S.C. § 1101(a)(33) (providing that, as used in the Act,"[t]he term 'residence' means the place of general abode . . . [a person's] principal, actual dwelling place in fact, without regard to intent").

On appeal, the Petitioner reasserts that the record establishes her joint residence with K-W-F-. 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 prescinding from them have been adequately confronted 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 remaining arguments and evidence submitted by the Petitioner are not sufficient, standing alone or viewed in the totality of the record, to establish that she resided with K-W-F-. On appeal, the Petitioner asserts that she and K-W-F- maintained two residences in New York and Florida, which they both shared. Citing *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950), she asserts that a shared residence takes many forms and is not limited to one location. We do not find this argument persuasive. As noted by the Director, section 101(a)(33) of the Act defines "residence" as the "place of general abode . . . [a person's] principal, actual dwelling place in fact, without regard to intent." Likewise, the preamble to the interim rule regarding the self-petitioning provisions of VAWA cited to section 101(a)(33) of the Act as the pertinent definition of "residence" and clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home in the United States 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); *see also Savorgnan v. United States*, 338 U.S. at 504-06 (explaining that in contrast to domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode, a determination by the U.S. Supreme Court that was later codified into the definition of "residence" in the Act,).

Here, although counsel asserts that the Petitioner and her spouse maintained two shared residences in New York and Florida, the record does not establish that they shared these two residences, regardless

of their asserted intent. Rather, as the Director noted, the Petitioner's own statements and the affidavits of third parties submitted below indicate that she resided in New York and that K-W-F- resided in Florida and that they would travel to "visit" each other, including after their marriage. Further, although bank statements in the record below and those provided on appeal identify both the Petitioner and K-W-F- as account holders and list an address in New York, these statements alone are not sufficient to establish that the New York residence was the couple's shared residence when the Petitioner's own statements and statements of others in the record indicate that K-W-F-'s "principal, actual" residence is in Florida. Thus, the record shows, by a preponderance of the evidence, that the Petitioner's "principal, actual" dwelling place was in New York while K-W-F-'s "principal," actual dwelling place was in Florida. 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 at 375. Absent probative evidence from the Petitioner of her shared residence with K-W-F- at either of the claimed marital residences, as required at section 204(a)(A)(iii)(II)(dd) of the Act, she has not met this burden.

The Petitioner also asserts on appeal that K-W-F-'s health problems prevented him from sharing a residence with her during the winter in New York and that satisfying USCIS's requirement that they jointly share her New York residence was "asking him to … risk his life." Although we acknowledge this claim, the Petitioner does not provide any legal authority that enables us to waive or otherwise disregard the requirement of section 204(a)(A)(iii)(II)(dd) of the Act that she have resided with K-W-F-. *See* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369 at 376 (explaining that the petitioner bears the burden to establish eligibility, and must do so by a preponderance of the evidence).

In conclusion, the Petitioner has not established that she resided with her U.S. citizen spouse, as required. Consequently, she has not demonstrated that she is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.