



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21383444

Date: JULY 12, 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), concluding that the Petitioner did not establish she resided with her abuser spouse, as required. 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 T-D-C¹, a U.S. citizen, in [REDACTED] 2012. In Part 10 of her VAWA petition, the Petitioner indicated that she lived with T-D-C- from May 2012 to July 2013 and further specified that from June 12, 2013, through July 9, 2013, she and T-D-C- lived together on [REDACTED] Street in [REDACTED] California.

In her undated declaration, submitted with the VAWA petition, the Petitioner detailed that she and T-D-C- met in 2011 while she was visiting [REDACTED]. Their courtship began over the phone, and she would travel from her home in [REDACTED] to visit him on special days or holidays. In April 2012, T-D-C- proposed, and in June 2012, he asked her to move in with him. They were married in [REDACTED] 2012. After about eight months of marriage, T-D-C- was incarcerated for three years for transporting drugs. The Petitioner explained that she returned to [REDACTED] to continue working as a care giver, but that she continued to go back and forth between [REDACTED] and [REDACTED]. In July 2016, T-D-C- was released from prison and they stayed at a motel. In August 2016, the Petitioner went to visit her sister in [REDACTED] and she explained that T-D-C- could not go with her to [REDACTED] because of his parole. While she was in [REDACTED] the Petitioner explained that she got into an argument with T-D-C- and he stopped answering her calls. When she returned to [REDACTED] she went to T-D-C-'s home located in [REDACTED] California, where he lived with his mother, and found the house empty. She returned to [REDACTED] and later found out through T-D-C-'s mother that he moved to Arizona. The Petitioner states that she did not hear from T-D-C- again until March 2017 when he called her yelling at her to stop talking to his mother and to stop trying to find him. The Petitioner claimed that T-D-C was verbally and emotionally abusive to her. The Petitioner submitted copies of the marriage certificate, a lease agreement for a property on [REDACTED] Street, life insurance documents, bank statements, and photographs.

The Director issued a request for evidence (RFE), stating, among other things, that the evidence did not establish that the Petitioner and T-D-C- shared a residence. Specifically, the Director noted that USCIS officers visited the address on [REDACTED] Street and found that it was for a private mailbox office space in a commercial building. The Director concluded that the Petitioner submitted a fraudulent document in support of her VAWA petition and, therefore, significant doubt is cast on her credibility. The Director also noted that officers visited the address in [REDACTED] where the Petitioner was employed as a caregiver and spoke to E-D-, her employer. E-D- confirmed that the Petitioner resided continuously at the home since November 2011 and that he did not know that she was married. The officers also spoke to the Petitioner and the Petitioner told the officers that she was married in [REDACTED] 2013 instead of [REDACTED] 2012, as indicated on the marriage certificate. In addition, the Petitioner stated that she never resided with T-D-C- after the marriage. She confirmed that she would visit T-D-C- in [REDACTED] occasionally by bus and she would stay for one day before returning to her place of residence. Given the derogatory information discovered, the Director requested additional evidence to show that the Petitioner resided with her spouse, providing examples of evidence that may establish the couple's shared residence.

In response to the RFE, the Petitioner submitted a statement. The Petitioner explained that T-D-C- gave her the lease agreement for the [REDACTED] Street address to include with her VAWA petition,

¹ We use initials to protect the identities of the individuals in this case.

which she now discovered is a fraudulent document. She further explained that T-D-C- told her that she could not use his mother's home address because his mother would lose her government benefits. With regard to the officers visiting her at her residence in [REDACTED] she asserted that she provided the officers with the correct marriage date of [REDACTED] 2012 even though she was groggy from being awoken from her sleep. Further, she explained that she told the officers that she and T-D-C- "stayed together at several places" and that she spent a lot of her relationship traveling to [REDACTED] to visit him while he was in prison. The Petitioner submitted additional bank statements, credit card statements, life insurance documents and photographs.

In March 2021, the Director issued a second RFE. The Director noted that the documents submitted with the first RFE were either dated while T-D-C- was incarcerated or dated after the Petitioner indicated that she was no longer with T-D-C-. Therefore, the Director found the documents insufficient to establish that the Petitioner and her spouse resided together. The Director again requested additional evidence to show that the Petitioner resided with her spouse, providing examples of evidence that may establish the couple's shared residence.

In response to the second RFE, the Petitioner submitted another statement. The Petitioner apologized for the confusion caused by the inconsistencies in the record. She further explained that T-D-C- told her that she could not disclose certain information as it would cause problems for his mother. The Petitioner stated that she and her spouse lived with his mother at [REDACTED] Street in [REDACTED] from June 2012 to July 2013, and she confirmed that she and her spouse never lived together in [REDACTED]. She also indicated that she continued to work in [REDACTED] while living with her spouse at [REDACTED] Street. She stated that her "work trips were only a few days while others were a bit longer." The Petitioner also confirmed that she never lived with T-D-C- after he was released from prison. The Petitioner concluded that she is unable to obtain proof that she and T-D-C- lived together at [REDACTED] Street. Instead, she provided a lease for an [REDACTED] Avenue address where she claims she and T-D-C- lived for one month prior to getting married. She stated that she would stay with him at the [REDACTED] Avenue address when she had consecutive days off from her job in [REDACTED].

The Director denied the petition, finding that in light of the discrepancies in the record, the Petitioner has not established by the preponderance of the evidence that she and T-D-C- resided together during the marriage.

On appeal, the Petitioner, through counsel, contends that she provided enough documents to show that she and T-D-C- cohabitated as husband and wife. The Petitioner also points out that she provided a lease agreement which shows that they resided together before their marriage. 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 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).

We acknowledge the Petitioner's assertions on appeal. However, the Petitioner's arguments on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to establish her joint residence with T-D-C-. Specifically, although we recognize the Petitioner's claim that she resided

with T-D-C- at his mother's home from June 2012 to July 2013, she does not have documentary evidence of their shared residence, and she has provided inconsistent information concerning their residence, including a statement to USCIS officers that she didn't reside with T-D-C- after their marriage. The Petitioner has not provided evidence or an explanation on appeal to resolve these inconsistencies. Moreover, although the Petitioner provided a lease agreement for the [redacted] Avenue address as evidence that they lived together prior to marriage, she does not provide further detail or evidence to support this claim. The Petitioner stated in her August 2021 declaration that she continued to work in [redacted] and only when she had consecutive days off, she would return to the [redacted] Avenue address to live with T-D-C-; statements made by the Petitioner and her employer to USCIS officers indicate that her employer's home was her principal dwelling place. As previously noted, "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 support that the Petitioner shared a residence with T-D-C-, and on appeal, she has not offered additional evidence sufficient to support her claims that she and her spouse resided together before or during their marriage. Based on the false information and related documentation provided with the VAWA petition, as well as the inconsistent information provided throughout the record, we agree with the Director that the Petitioner has not met her burden of establishing that she resided with her U.S. citizen spouse. As the Petitioner has not established this requirement, she has not demonstrated that she is eligible for immigrant classification pursuant to VAWA.

ORDER: The appeal is dismissed.