



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

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

In Re: 17420374

Date: JUN. 14, 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). 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). U.S. Citizenship and Immigration Services (USCIS) must consider "any credible evidence" in a VAWA petition; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. See 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 Romania who entered the United States in April 2016 as a B2 visitor along with his then fiancée, also from Romania. In [] 2017 the Petitioner married a U.S. citizen, S-B-B-,¹ with whom he claims he resided from January 2017 until May 2018. The couple divorced in [] 2018, and he filed his VAWA petition in November 2018. With the petition and in response to the Director's request for evidence (RFE) the Petitioner submitted personal affidavits, financial records, letters of support, psychological evaluations, civil documents, and photographs. The Director denied the petition, finding that the Petitioner did not establish that he resided with his U.S. citizen spouse, entered the marriage in good faith, and was battered or subjected to extreme cruelty. On appeal, the Petitioner submits a brief, an updated affidavit, an affidavit from his former fiancée, supplemental financial records, captioned photographs, and reference materials about VAWA.

In his affidavits below the Petitioner described meeting S-B-B- in August 2016 and feeling immediately attracted to her. He stated that they had common interests such as fashion and traveling, that they began seeing each other daily, and that they went hiking and to a trampoline park. He claimed that he became close to her and her daughter and then moved in with them, and that in [] 2017 the couple had a small wedding ceremony followed by pizza. He stated that they were happy and that he began working as an Uber driver in October 2017. He explained that he began working as a truck driver in February 2018 to earn more income, which took him away from home during the week, and that his nightmare then began as S-B-B- stopped answering his phone calls, got angry if he questioned her, began going out with friends he did not know, and moved his things out of their room. The Petitioner stated that he bought S-B-B- a car and gave her money to improve their apartment but did not know where she spent it, and that she regularly received cosmetic treatments and did not contribute financially even though she was working as a bartender. He claimed he once came home to find S-B-B- in bed with another woman, and that she responded angrily by pushing him out of the room. The Petitioner asserted that S-B-B- got an implant to prevent pregnancy even though she knew he wanted a family and afterward she went on a trip to Mexico without him.

In psychological evaluations a psychologist concluded that the Petitioner's symptoms met the definition of adjustment disorder and depression, interfering with his daily functioning. The evaluations showed that the Petitioner reported S-B-B- ignored him, pushed him, humiliated him verbally, and told him not to come home without permission. The psychologist found that S-B-B- showed controlling behavior over the Petitioner, who reported depression, anxiety, sleep disturbance, and difficulty concentrating.

A friend of the Petitioner stated that the Petitioner told him about S-B-B- not answering his phone calls, insulting him, and going to Mexico without him, and that he found her social media account with a photo in another man's arms. Another friend stated that the Petitioner told him S-B-B- did not appreciate his hard work, spent his money on unnecessary things, and caused him embarrassment, and the friend observed that the Petitioner was suffering. The Petitioner's mother stated that he told her how S-B-B- was acting, that he felt like a stranger, and that he was going through depression.

¹ We use initials to protect individual identities.

In the RFE the Director indicated that review of the record showed discrepancies in the Petitioner's claims and other evidence. The Director noted specifically that a site visit by USCIS officers to the address where the Petitioner claimed to reside with S-B-B- found only female clothes and hygiene items and no pictures or evidence of the Petitioner living there. The Director further noted that in a site visit to an address public records showed was associated with the Petitioner's former fiancée, the property manager confirmed the names of him and his fiancée on the lease. The Director also identified deficiencies in other evidence submitted by the Petitioner.

In response, the Petitioner maintained that his clothes were in the daughter's dresser because the master bedroom was full of S-B-B-'s clothes and that he never used specific hygiene products but rather whatever was there. He also contended that he did not have his own pictures on the wall because he thought it would make S-B-B-'s daughter anxious as she needed time to accept him. The Petitioner explained that he co-signed an apartment for his ex-fiancée because she had no credit score, but he never lived there as there was no longer anything romantic between them. Regarding the Director's concerns that bank account activity did not show joint use and shared financial responsibilities, the Petitioner claimed that as in the beginning of their relationship only S-B-B- was working as a bartender making tips, and they paid bills in cash so there was not much activity on their bank account.

In denying the petition the Director referred to discrepancies in the record about where the Petitioner was residing as the USCIS site visit and public records revealed he was living with his former fiancée while financial evidence was not sufficient to establish shared residence and good faith marriage with S-B-B-. The Director noted specifically that although the Petitioner claimed they paid rent by cash, the lease stated cash was not accepted and there was no supporting evidence of rent or utility payments. The Director determined that a 2017 Form 1040 was not a certified copy by IRS, that there was no evidence car and auto insurance were paid through a shared account or that a life insurance policy was paid and current, and that bank statements did not provide evidence of commingled resources and shared financial responsibilities. The Director found that third-party affidavits did not provide details about the *bona fides* of the marriage and the couple residing together, and that the Petitioner's affidavits were not persuasive as they did not detail the residence, furnishings, residents, neighbors, and daily routines, and did not demonstrate a shared social or family relationship or that they took part in activities as a couple. The Director concluded that evidence failed to demonstrate the Petitioner shared a *bona fide* spousal relationship for immigration purposes and that they ever shared a residence, financial responsibilities, or activities as a couple.

The Director further determined that the Petitioner's affidavits lacked detail of specific incidents of abuse or extreme cruelty and third-party affidavits were vague without specific information about what they witnessed but rather only what was told to them. The Director acknowledged the psychological evaluation but determined the behavior discussed in it did not constitute extreme cruelty as envisioned in VAWA legislation.

On appeal, the Petitioner argues, through counsel, that the Director applied an incorrect standard, imposed baseless requirements, and discounted evidence that he entered the marriage in good faith and that they lived together. He contends that some of the Director's findings were already addressed in the RFE response where he explained the lack of evidence found during a site visit at his residence with S-B-B- and where he clarified that his ex-fiancée needed a co-signer for her apartment lease because of her financial difficulties. On appeal, he submits an affidavit from his former fiancée, now

in Romania, explaining difficulties she had in the United States with her husband and his father during which time the Petitioner helped her by co-signing her apartment lease. The Petitioner argues that there is no requirement that he provide documentation such as rental receipts as stipulated by Director and maintains that he previously explained that he gave cash to S-B-B- who paid their rent. In an affidavit submitted on appeal he adds that he withdrew cash from his Romanian bank to give S-B-B- for his share of the bills with the understanding that she was paying expenses.

The Petitioner contends that there is no requirement that tax documents be certified to be credible and that insurance policies be current, but on appeal submits a 2017 IRS tax return transcript and payment history for auto insurance and life insurance. He asserts that bank statements reflect purchases from various vendors including stores, restaurants, auto repair, and insurance companies, and he submits additional statements on appeal.

The Petitioner argues that factors offered by the Director to prove joint residence are not applicable in a marriage based on abuse and contends that he already stated that he, S-B-B- and her daughter lived together, but on appeal he submits an affidavit describing home furnishings and shared activities. He details the layout of the apartment and states that they had rustic decorations throughout the home, that the daughter had a princess canopy bed, and that they watched television from the sofa, performed karaoke, and ate popcorn, and he helped with homework. The Petitioner maintains their activities were Monday to Thursday because on weekends S-B-B- worked and her daughter stayed with her father.

Upon review of the record, we agree with the Director that the Petitioner has not established that he shared residence with S-B-B- and that he entered into marriage in good faith. The arguments and evidence submitted on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to overcome the Director's decision. We recognize that on appeal the Petitioner addresses some of the deficiencies identified by the Director with additional evidence, notably financial records and an affidavit describing the residence he claims to have shared with S-B-B-, but discrepancies remain.

The Petitioner initially stated that their rent was paid in cash and then that he gave cash to S-B-B- to pay bills but does not clarify how she paid the bills. He does not explain why, given that the record indicates they had a joint bank account, bills were paid in cash rather than using the joint account and he does not explain why there were no receipts for bills that were paid in cash. The Petitioner also initially claimed that in the beginning of their relationship their only income was S-B-B-'s cash payment for bartending, but he indicated that he was working as an Uber driver from October 2017 and as a truck driver from February 2018, and he does not explain why bills were not then paid from the joint account.

Although the bank statements contain the names of both the Petitioner and S-B-B- and show some activity, the transactions are limited in number and type, reflect primarily small purchases, do not identify who was responsible for the purchases, and do not illustrate joint use or activity normally related to household purchases. The monthly bank statements submitted on appeal cover the period from December 2017 through June 2018, a period during which the Petitioner claims to have been working. The statements list numerous deposits, primarily through online transfers, but it is unclear

whether those reflect the Petitioner's driving income being deposited into an account he shared with S-B-B-.

In his affidavits the Petitioner depicts few mutual interests, describes limited shared experiences, and provides little insight into the development of the relationship with S-B-B- leading to his decision to marry or details of their daily life and routine leading up to or after their marriage to support that he shared residence or entered the marriage in good faith. His affidavits focus largely on the behavior of S-B-B- after marriage, and statements submitted in support of the Petitioner mention learning of her behavior, but they do not offer observations or other details of the couple's relationship. On appeal the Petitioner adds description of the residence he claims to have shared with S-B-B-, but his affidavits do not detail a daily routine that would evince a shared residence. The record does not contain sufficient evidence to establish that the Petitioner resided with S-B-B- and that he entered into marriage in good faith.

As noted, the Director also determined that the Petitioner did not demonstrate that he suffered battery or extreme cruelty. The Petitioner argues that the Director did not give proper weight to evidence, discounted his affidavits, and erred by finding he lacked specifics, and substituted the judgment of a mental health professional who found he was suffering trauma from his treatment by S-B-B-.

As the Petitioner's inability to establish that he entered into marriage with S-B-B- in good faith and that they resided together, as required, is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *See INS v. Bagamashad*, 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).

The Petitioner has not demonstrated that he is eligible for VAWA classification.

ORDER: The appeal is dismissed.