U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21159100

Date: JUN. 15, 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 intended 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. 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. 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). While we must consider any credible evidence relevant to the VAWA petition, we determine, 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).

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, 376 (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).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Haiti, married M-J-[1], a U.S. citizen, in [redacted] 2015. She filed the instant VAWA petition in June 2019 based on the qualifying relationship. The Director denied the petition, determining, in pertinent part, that the Petitioner had not established that she resided with M-J-. The Director explained that although the Petitioner's self-affidavit implied that she and M-J- spent "more than 100 days together" in a home in [redacted] Florida, during the time of her relationship, the statements and documentation provided were insufficient to show, by

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

a preponderance of the evidence, that the Petitioner and M-J- shared a residence. The Director explained that evidence submitted by the Petitioner indicated that she had additional residences in [redacted] Florida, and that M-J- was frequently outside of the United States.

On appeal, the Petitioner reiterates her assertion that she resided with M-J-. 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).

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 that she resided with M-J-. On appeal, the Petitioner contends that a recent change to the USCIS Policy Manual has resulted in her meeting the requirement for shared residence. This update to the Policy Manual states, "[t]he self-petitioner must reside or have resided with the abuser in the past to be eligible for the self-petition. USCIS no longer requires the self-petitioner to have resided with the abuser during the qualifying relationship." 3 *USCIS Policy Manual*, D.2(F), https://www.uscis.gov/policymanual. The essence of this change is that USCIS no longer requires the residence to take place after the qualifying relationship was established, and the shared residence may have taken place in the past. Here, however, the Petitioner does not claim, on appeal or in statements submitted with her VAWA petition, that she resided with M-J- prior to entering the qualifying relationship.

The Petitioner further claims on appeal that the Director's decision failed "to apply the any credible evidence standard to her written testimony and documentary evidence." The Director's decision acknowledged the evidence submitted, which included self-affidavits, a copy of a blank check which included both the Petitioner's and M-J-'s names, a copy of a Florida Voter Registration form for M-J- (which is undated), a copy of an envelope addressed to the Petitioner, third-party affidavits, additional mail correspondence, and a copy of an Accurint background check. The Director's decision addressed the Petitioner's statements, in conjunction with the evidence, and determined that it was insufficient. While we must consider any credible evidence relevant to the VAWA petition, we determine, 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). In our review, we determine that there was no error in the Director's assessment of the evidence. The Petitioner submitted a copy of a blank check, and copies of their jointly completed Form IRS 1040, U.S. Individual Income Tax Return, from 2017. We note that the Director's decision did not acknowledge the joint completion of the 2017 tax return; however, as no accompanying evidence was submitted to prove that the tax return was filed, we assign limited weight to its inclusion. The Petitioner also submitted a copy of a letter from the [redacted] which states that the Petitioner and M-J- had been account holders since October 2011, which was prior to the Petitioner's relationship with M-J- and does not explain who the primary account holder was before, or when one of the parties was added to the account, and we therefore assign limited weight to this letter. The Petitioner also submitted a transaction receipt from [redacted] where she sent money to M-J- to an account with [redacted] in November 2015. While this document reflects the [redacted] address for both the Petitioner and M-J-, this is not a

statement that indicates joint use of a bank account, and only reflects a singular transaction between the Petitioner and M-J- and is therefore assigned limited weight.

The remaining documentary evidence submitted includes either the Petitioner's or M-J-'s name alone. Further, the statements from the Petitioner indicated that she only resided at the [redacted] address when M-J- was in the United States, and, as noted by the Director, the [redacted] report, which was completed for M-J- and not the Petitioner herself, indicated her as a "possible relative" and indicated two additional addresses for her in [redacted] during the time of the qualifying relationship. Notably, the [redacted] report does not include the [redacted] address in the list of "Previous and Non-Verified Addresses" or as an "Active Address" for the Petitioner. In the third-party affidavits, each of the individuals reflect upon being invited to the home in [redacted] after the wedding, but do not provide details regarding the Petitioner and M-J-'s shared residence.

Finally, the Petitioner argues that "the time [she] spent together with [her] abusive spouse at the marital home is sufficient to satisfy the "has resided with" prong of the eligibility statute found at INA § 204(a)(1)(A)(iii)(II)(dd)" (emphasis removed). The Petitioner again states in her brief on appeal that she spent more than 100 nights in the home in [redacted] during the time of her marriage to M-J-, and states that "cohabitation for a single night with an abusive spouse at the place of *intended* shared dwelling could satisfy the "has resided" requirement of § 204(a)(1)(A)(iii)(II)(dd)." However, 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. 491, 504-06 (1950) (explaining, in the U.S. Supreme Court decision that was ultimately codified into the definition of "residence" in the Act, that in contrast to domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode). In prior statements in the record, the Petitioner indicated that her son stayed at her sister's apartment, and that she also stayed at her sister's apartment when M-J- was not there. As such, it appears that she was "continuing to maintain a general place of abode or principle dwelling place elsewhere," namely her sister's apartment in [redacted] and only visited M-J-'s home on occasion. Accordingly, the Petitioner has not established that she and M-J- resided together.

III. CONCLUSION

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

ORDER: The appeal is dismissed.