U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21084135

Date: JUN. 21, 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 had not established that she resided jointly with her spouse, as required. The matter is before us on appeal. The Petitioner submits on appeal a brief and copies of previously-submitted evidence, asserting her eligibility. 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. Section 101(a)(33) of the Act 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." 8 U.S.C. § 1101(a)(33).

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). Although 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). 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).

II. ANALYSIS

The Petitioner, a native and citizen of Nigeria, entered the United States in January 2013 as a nonimmigrant visitor. The record indicates that she came with her first spouse, M-M-[1], and their children. The Petitioner stated that in February 2013, M-M- left the United States, returning to Nigeria, and dissolved their marriage that same month. She later married A-A-, a U.S. citizen, in [redacted] 2013, but they divorced in 2016. The Petitioner subsequently filed the instant VAWA petition in 2017 based on her marriage to A-A-.

The Director denied the VAWA petition, determining that the Petitioner had not demonstrated that she and A-A- resided together, as required to establish eligibility for VAWA classification. The Director explained that the Petitioner's initial affidavit did not contain sufficient probative details to show that A-A- resided with her at either of the two addresses in which she claimed they resided during their approximately two-year marriage. Apart from briefly discussing incidents of claimed abuse by A-A- in her home, the Director noted that the Petitioner did not indicate that they even lived together. Further, in denying the petition, the Director also relied on and described in detail numerous inconsistencies in the Petitioner's statements and evidence relating to her claim of shared residence with A-A-. In addition, the Director noted information in the record obtained from USCIS site visits conducted in 2014 in relation to the Form I-130, Petition for Alien Relative, filed by A-A- on the Petitioner's behalf in 2013, which indicated that the Petitioner had not been residing with A-A- at the claimed marital residence as she had asserted.[2] The Director considered the Petitioner's response to a request for evidence (RFE), which had notified her of the inconsistencies and other deficiencies in the record regarding her joint residence claim, but concluded that her explanations and evidence addressing them did not resolve them.

On appeal, the Petitioner asserts that she submitted sufficient evidence before the Director to demonstrate that she resided with her spouse. 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 on appeal are not sufficient, viewed in totality with the underlying record, to overcome the reasons for the Director's denial. The Petitioner maintains on appeal that the "cited documentary deficiencies [by the Director] are relatively minor" and that she provided plausible and cogent explanations in her RFE response for them. We find these arguments unavailing, as the numerous inconsistencies in the record, set forth in detail in the Director's decision, directly conflict with the Petitioner's claim of joint residence with A-A- and are therefore material to establishing eligibility.

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

[2] The Form I-130 was denied in March 2015 after a Notice of Intent to Deny (NOID) was issued, and a copy of the denial letter was submitted by the Petitioner with the VAWA petition. A-A- provided a statement jointly authored with the Petitioner in 2015, a copy of which the Petitioner submits on appeal. Both the NOID and the Form I-130 denial outlined findings from a USCIS investigation of the couple's claimed [redacted] Court or [redacted] Lane marital residences.

The Petitioner further contends that the Director failed to conduct a specific examination and discussion of all the documentary evidence the Petitioner submitted. As stated, USCIS considers any credible evidence but retains sole discretion in determining the credibility of and the weight to be given such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Here, contrary to the Petitioner's assertions, our review indicates that the Director fully considered all the relevant evidence relating to her claimed joint residence with A-A-, giving them appropriate weight, and the Petitioner has not identified any particular documentary evidence the Director failed to examine or discuss in determining that she had not satisfied the joint residence requirement. The Director's decision discussed in detail the deficiencies in the Petitioner's evidence of joint residence, including numerous inconsistencies in the record undermining her claim of shared residence. As the Director explained, although the Petitioner's RFE response addressed some of the inconsistencies, she did not resolve them, and on appeal, she has not provided additional explanations or evidence to overcome the referenced inconsistencies.

The Petitioner also attempts to shift the burden in these proceedings and contends that the "questions" raised by the Director about her joint residence with A-A- do not amount to the substantial and probative evidence necessary to support the Director's determination that the Petitioner had not established "the validity of her marriage" and was not eligible for VAWA immigrant classification. However, the Director denied the petition because the Petitioner did not establish her joint residence with A-A- and not on the basis that her marriage was not entered into good faith or was not valid. Moreover, the Petitioner is mistakenly referencing the requirement for the marriage fraud prohibition under section 204(c) of the Act, which requires "substantial and probative" evidence of the marriage fraud in the record in order for the prohibition to apply and is inapplicable here. 8 C.F.R. § 204.2(a)(1)(ii). As stated, it is the Petitioner who bears the burden in these proceedings to demonstrate by a preponderance of the evidence that she and A-A- resided together. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (describing the petitioner's burden under the preponderance of the evidence standard and explaining that in determining whether a petitioner has satisfied their burden, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence). Here, as stated, the Director properly determined that the Petitioner has not met that burden.

Lastly, the Petitioner submits on appeal a copy of A-A-'s and her 2015 joint statement responding to the Director's NOID in her Form I-130 proceedings. The joint statement addressed a number of inconsistencies in the record identified in the Director's NOID, as well as the 2014 USCIS investigation findings showing that A-A- maintained a separate residence during the couple's marriage and that their neighbors identified the Petitioner and her children as the only residents of the claimed residence during the period the Petitioner asserted she and A-A- resided together there. As the Director's Form I-130 denial noted, the explanations provided in this joint statement did not resolve the referenced discrepancies. We do not further address this issue, however, as the joint statement does not provide any explanations for the remaining inconsistencies identified in the record here between the Petitioner's own statements in these proceedings (in her VAWA petition and written statements before the Director) and her documentary evidence.

Accordingly, the Applicant has not demonstrated by a preponderance of the evidence that she resided with her abusive U.S. citizen spouse, A-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

III. CONCLUSION

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

ORDER: The appeal is dismissed.