U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19716870

Date: MAY 16, 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), 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 Nigeria, married M-M-[1], a U.S. citizen, in [redacted] 2016. She filed the instant VAWA petition in April 2019 based on this marriage. The Director denied the petition, determining, in pertinent part, that the Petitioner had not established that she resided with M-M-. The Director explained that although the Petitioner's self-affidavit implied that she and M-M- began residing together at her mother-in-law's apartment, after some time, the Petitioner claimed that she and M-M- moved to the Petitioner's sister's basement. The Director

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

explained that in M-A-'s (the Petitioner's sister) affidavit, M-A- stated that the Petitioner and M-M- moved into her basement "after the wedding," which conflicted with the Petitioner's statements that they initially lived with M-M-'s mother. The Director noted that M-A- submitted a second affidavit, which again did not indicate that the Petitioner and M-M- resided with M-M-'s mother prior to moving in with M-A-. Finally, the Director noted that the only evidence provided to indicate that the Petitioner and M-M- resided together in M-A-'s home was a letter from [redacted] Insurance which was dated after the Petitioner claimed that she was no longer residing with M-M-, and therefore was given limited evidentiary value. Finally, the Director noted that the updated self-affidavit submitted by the Petitioner in response to the Director's Request for Evidence (RFE) "changed voices multiple times," and was given limited evidentiary value, as the Director stated it was unclear who wrote the affidavit.[2]

On appeal, the Petitioner reiterates her assertion that she resided with M-M-. 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-M-. In updated statements submitted on appeal, the Petitioner disputes that there were inconsistencies between her statements, and the statements of her sister, M-A-, regarding when the Petitioner and M-M- moved into her basement. The Petitioner claims that M-A- never stated that they moved into her basement "immediately after" their marriage, but only that they moved into her basement "during" the marriage. In M-A-'s first affidavit, undated, she stated, "[i]t all began so well they were love birds after the wedding myself and my husband offered them our basement, which they moved to because my sister was yet to get her papers." In M-A-'s second affidavit, dated December 20, 2020, she stated, "[M-M-] had moved in with [the Petitioner] in the basement of [M-A-'s home]." While the Petitioner claims that M-A-'s affidavits do not indicate that her and M-M- moved into M-A-'s home immediately following the wedding, they also do not provide any specific dates or details about when the Petitioner and M-M- moved into M-A-'s home, or how long they resided together in M-A-'s home. Further, neither of M-A-'s affidavits stated specifically that the Petitioner and M-M- resided with M-M-'s mother. The only documentary evidence that the Petitioner submitted to indicate any shared residence during her marriage to M-M- are notices from USCIS, the letter from [redacted] addressed to M-M- at M-A-'s address, the Petitioner's self-affidavits, and the affidavits from M-A-. In reviewing the Petitioner's previous statements in the record, while she claimed that she and M-M- moved into M-A-'s basement, she does not provide any information about the length of time M-M- resided there with her, or their life there together.

[2] The section of the affidavit in question appears to not simply "change voices" as described by the Director. The affidavit is interrupted mid-sentence, and then begins, "To Whom It May Concern:", in different font and tone from the remainder of the affidavit and seems to have been an affidavit from another individual who was attesting to the Petitioner's character. The affidavit then resumes with the Petitioner's statements. On appeal, the Petitioner has not addressed what led to this issue with her affidavit; however, upon our review, the Director's decision to limit the weight of the Petitioner's statements in this affidavit did not contribute to any error.

In response to the Director's RFE, she claimed, "I have also stated above that during this period our lives revolved between [M-M-'s mother's address] and [the Petitioner's sister's address] . . . The fact of the matter is that, M-M- will stay with me in [the Petitioner's sister's address], the next day he will disappear. It will only take time for him to resurface t [*sic*] either ask me for either sex food or any sill [*sic*] things. Sometimes he will stay with me at [M-A-'s house] in the daytime and make sure that he gets back to his mother before she comes back from work in the evening." The Petitioner further claimed in her previous statements that M-M-'s mother was responsible for all of the bills, and frequently took any mail during the time the Petitioner claims to have resided in M-M-'s mother's home. Although we acknowledge this explanation, the Petitioner has still not provided specific, probative details substantiating her claim that she resided with M-M- at either address, such as describing home furnishings, neighbors, daily routines, or any of their shared belongings—details that the Director noted were lacking in the record below when the RFE was issued.

On appeal, the Petitioner submits a brief and copies of evidence already contained within the record. In the brief, the Petitioner again contends that the discrepancies between her statements and those of her sister are insufficient to warrant denial of her petition. However, as previously discussed above, we disagree. Accordingly, the Petitioner has not established that she and M-M- resided together.

The Director further determined that the Petitioner had not demonstrated that she married M-M- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act. As the Petitioner's inability to establish that she resided with M-M- is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *See INS v. Bagamasbad*, 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).

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.