U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19697060

Date: MAY 16, 2022

Motion on Administrative Appeals Office 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)(l)(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 we dismissed the subsequent appeal. The matter is now before us on a motion to reopen and reconsider.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act. 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). While we must consider any credible evidence relevant to the VAWA self-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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

II. ANALYSIS

The Petitioner, a native and citizen of the Philippines, met E-J-,[1] a U.S. citizen, in May 2015. The Petitioner explained that she married E-J- in [redacted] 2016, and that she left the relationship in July

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

2017. She filed the instant VAWA petition in November 2017. The Director denied the petition, determining, as relevant here, that the Petitioner had not established that she resided with E-J-, as required. In particular, the Director observed that in the Petitioner's initial personal statement, she indicated multiple times that she was residing in her own apartment during the marriage, and in a supplemented written statement in response to the Director's request for evidence (RFE), she explained that E-J- told her to stay in her apartment, made excuses as to why she and her children could not move in with him and his mother, and never fulfilled his promise to get a new lease agreement together. The Director determined that given these statements, the remaining documentary evidence of their claimed shared residence—promotional mail, cable bills dated after she claimed to live with E-J-, a bill receipt for a marriage certificate, medical documents, and a photocopy of an envelope to E-J- at her address—that largely included her or E-J-'s name alone, was insufficient to establish that she and E-J- resided together.

In our prior decision, incorporated here by reference, we affirmed the Director's decision that the Petitioner did not establish that she resided with E-J-, and reserved the issue of the Petitioner's good moral character which was an additional ground for the Director's denial. In our dismissal of the Petitioner's appeal, we acknowledged new evidence but determined that it did not address the Petitioner's prior statement that E-J- told her stay in her apartment, made excuses as to why she could not live with him, and never fulfilled his promise to get a new lease agreement together. We also determined that the Petitioner's claimed usage of the word "my" when describing her apartment conflicted with her statement that also described "his" house during the same time period following the marriage, in apparent reference to a separate residence maintained by E-J-. Further, we determined that additional affidavits submitted with the Petitioner's appeal were insufficient as they did not provide any specific, probative details regarding the claimed shared residence.

Finally, we reviewed typewritten notes regarding a Form I-130, Petition for Alien Relative that E-J- signed in December 2016 but never submitted to U.S. Citizenship and Immigration Services (USCIS) on her behalf, which stated that he and the Petitioner resided at the claimed shared residence beginning in May 2015. We afforded little evidentiary weight to the Form I-130 and accompanying notes, because even if E-J- had submitted the Form I-130 to USCIS, it suggested that he and the Petitioner began to live together during the same month in which they first met, which is inconsistent with other evidence in the record including the Petitioner's initial statement, which states that E-J- was living at a different address with his mother during this time. As such, the Petitioner did not establish that she resided with E-J-.

In support of her motion to reconsider, the Petitioner submits an updated brief. In the brief, she presents a disagreement with our determination that evidence and statements submitted with her petition and appeal did not meet the standard of preponderance of the evidence, argues that we are holding the Petitioner to a higher standard than present in the law, and asks us to reevaluate the evidence in the record. The Petitioner states that, "[e]valuated collectively, although it is imperfect and still understandably raises some doubt, [her] evidence is sufficient and corroborated enough to establish by the preponderance standard," that she and E-J- resided together. In support of this argument, the Petitioner discusses the definitions of the terms "residence" and "domicile" and claims that we were holding her to a standard that fit closer to "domicile" which is not required by the law and further, that the standard we were using to assess her evidence was closer to "beyond a reasonable

doubt" rather than preponderance of the evidence. The Petitioner admits "having some apparent inconsistencies," but maintains that her evidence is sufficient to meet the preponderance standard.

Rather than address our previous concerns regarding the Petitioner's claimed usage of the words "my" and "his" when discussing her and E-J-'s residences, she "respectfully ask[s] the AAO to consider these statements as reflecting a different sense of understanding of the word 'residence.'" 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). The Petitioner's previous statements, discussed in the Director's denial and our dismissal of her appeal, indicated that that she was living in her own apartment during the marriage, and that E-J- would not allow her and her children to move in with him and his mother. As stated above, a preponderance of the evidence suggests that the Petitioner and E-J- were "continuing to maintain a general place of abode or principal dwelling" apart from one another, and the Petitioner's evidence and statements previously submitted were insufficient to overcome the Director's determination.

The Petitioner's argument that we have held her to a higher standard or relied on a definition of residence closer to that of "domicile" is insufficient for the reasons discussed above. The Petitioner additionally relies on statements already provided and assessed in our previous decision, and while not discussing any error in our assessments, asks us to reconsider their contents. We determine that there is no error in those assessments, as they continue to lack specific, probative details regarding the claimed shared residence. As the Petitioner's arguments in her motion to reconsider do not establish that our prior decision was based on an incorrect application of law or USCIS policy, we dismiss the Petitioner's motion to reconsider.

In her motion to reopen, the Petitioner submitted an updated clearance letter in support of the good moral character requirement. In our previous decision, we declined to reach and reserved the Petitioner's arguments on the issue. Since the Petitioner's inability to establish that she resided with E-J- remains dispositive, we continue to decline to reach and again hereby reserve the Petitioner's 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). As such, we dismiss the Petitioner's motion to reopen.

ORDER: The motion to reopen is dismissed

FURTHER ORDER: The motion to reconsider is dismissed.