U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20434244

Date: MAY 20, 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 did not establish that he married his U.S. citizen spouse in good faith or resided with her, as required. The matter is now before us on appeal. Upon *de novo* review, we will remand the matter to the Director.

I. LAW

A petitioner who is the spouse or former spouse of a U.S. citizen may self-petition for immigrant classification 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 the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Good faith requires that a petitioner has not "entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws." 8 C.F.R. § 204.2(c)(1)(ix). Evidence that the marriage was entered into in good faith may include, but is not limited to: shared insurance policies, property leases, income tax forms, and bank accounts; testimony or other evidence regarding the couple's courtship, wedding ceremony, shared residence, and experiences together; birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; or affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii).

In addition, a 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 did, in fact, reside together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). Evidence of joint residence may include employment, school, or medical records; documents relating to housing, such as deeds, mortgages, rental records, or utility receipts; birth certificates of children; insurance policies; or any other credible evidence. 8 C.F.R. § 204.2(c)(2)(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). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). USCIS determines, 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).

II. ANALYSIS

The Petitioner married F-O-[1], a U.S. citizen, in [redacted] 2013, while he was living in France and she was living in the United States. According to his initial statement, he and F-O- went to elementary school together in Haiti, lost contact with each other, and married other people. He explained that after they both got divorced, they found each other on Facebook and rekindled their friendship which turned into a relationship. Among other things, he stated that he moved to the United States to live with F-O- in November of 2015.

The Director denied the petition, concluding that the Petitioner did not establish that he married F-O- in good faith or that they resided together during the qualifying relationship. The Director specified that: the Petitioner's affidavit did not sufficiently explain why he continued residing in Paris for more than two years after entering the marriage; the Petitioner's affidavit lacked probative details of the couple's courtship, interactions, common interests, shared experiences, future plans and/or memorable moments together; joint bank statements were dated before the Petitioner claims to have begun residing with F-O- and did not show a commingling of finances; a Western Union receipt dated December 12, 2015, showed the Petitioner's ex-wife sent him money; copies of text messages were not translated into English; and photographs lacked captions. The Director specified that the decision was based on the initial evidence in the record because, even taking into consideration filing date flexibilities adopted in response to the Coronavirus (COVID-19) pandemic, the Petitioner did not respond to a Request for Evidence (RFE), but rather, requested a 45-day extension which USCIS could not grant.

On appeal, the Petitioner contends that although it was tardy, he did submit almost 400 pages of documentation in response to the RFE which he re-submits on appeal, including, but not limited to: two new statements from the Petitioner; a letter from the couple's previous landlord attesting that the Petitioner and F-O- lived together for two years; letters from friends, including a letter from the best man at their wedding; a certified translation of text messages between the Petitioner and F-O-, consisting of 85 pages, dated from December of 2012 to April of 2016; bank statements; and copies of photographs.

We find it appropriate to remand the matter to the Director to consider all of the evidence in its entirety in the first instance to determine whether the Petitioner has established his good faith marriage, joint residence, and other eligibility requirements for immigrant classification under section 204(a)(1)(A)(iii) of the Act. To the extent the Director stated that the Petitioner did not establish that

[1] We use initials to protect the identities of the individuals in this case.

he lived with F-O- during the qualifying relationship, we note that USCIS no longer requires a petitioner to reside with the abuser during the qualifying relationship, but only that they reside or have resided together in the past. 3 *USCIS Policy Manual* D.2(F), https://www.uscis.gov/policymanual.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the Director to review the new evidence in the first instance and for the entry of a new decision.