U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17931060

Date: MAY 24, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident (VAWA petition), concluding that the Petitioner did not establish he resided with his abuser spouse or that he married his lawful permanent resident spouse in good faith, as required. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse or former spouse of a lawful permanent resident may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the lawful permanent resident spouse in good faith, and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii)) of the Act. Among other things, a petitioner must establish that they have resided with the abusive spouse. Section 204(a)(1)(B)(ii)(II)(dd) of the Act. 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). U.S. Citizenship and Immigration Services (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

In this case, the Petitioner married O-I-[1], a lawful permanent resident, in [redacted] 2018. In Part 10 of his VAWA petition, the Petitioner indicated that he lived with O-I- from June 2018 to [redacted] 2018. In his February 2019, declaration, the Petitioner detailed that he and O-I- lived together for seven months before they decided to get married in [redacted] 2018, and that on the day of the wedding ceremony, the Petitioner and O-I- "had a fight and he [O-I-] was extremely violent. I was afraid for my life. I then decided to file a petition for injunction for protection against domestic violence and on [redacted]/2018, my husband [O-I-] left our apartment. We have separated but have not started the divorce process yet." The Petitioner submitted an incomplete lease for the period of October 25, 2018, through October 24, 2019, containing the Petitioner's and O-I-'s names as residents; the contract date was listed as January 28, 2019, after the Petitioner stated O-I- had moved out. In addition, an affidavit was provided from an individual that stated that the Petitioner and O-I- did live together, but it provided no detail on the dates of said residence or how he had come to have such knowledge. The Petitioner also submitted a [redacted] 2018, marriage certificate indicating that the Petitioner resided in [redacted] Florida, and O-I- resided in [redacted] Florida.

The Director issued a request for evidence (RFE), stating, among other things, that the evidence indicated that the Petitioner and O-I- had separate residences and did not actually share a residence. The Director sought documentation that the Petitioner resided with his spouse, providing examples of evidence that may establish the couple's shared residence.

In response to the RFE, the Petitioner stated that although he and O-I- moved in together in June 2018, he did not want to include O-I-'s name on the lease until the divorce with his first spouse was finalized. The Petitioner goes on to state that his divorce from his first spouse took longer than expected, and it was finally concluded in [redacted] 2018, and O-I-'s name was added to the lease in January 2019. The Petitioner also maintains that the reason he and O-I- listed different addresses on the marriage certificate was because O-I- was working in [redacted] and had a residence with other employees there; when he was tired after work, he would stay in [redacted], but most of the days O-I- was with him in their apartment in [redacted] Florida. In support, he submits a complete copy of the January 28, 2019, lease listing both his and O-I-'s names as "residents"; a duplicate copy of the affidavit previously provided by an individual that stated that the Petitioner and O-I- lived together; and an untranslated and undated letter addressed to O-I- at the Petitioner's address in [redacted] Florida.

The Director denied the petition, finding that the Petitioner and his spouse did not share a principal, actual dwelling place together, as required. Specifically, the Director noted that the complete copy of the lease listing both the Petitioner's name and O-I- as "residents" was not signed until January 28, 2019, after O-I- had moved out according to the Petitioner's declaration, and thus had minimal value in establishing joint residency. The Director also determined that the Petitioner did not establish that he entered the marriage with O-I- in good faith. On appeal, the Petitioner submits a brief and additional documents and asserts that his due process has been violated because USCIS gave little or no weight to all the evidence regarding the Petitioner's time residing with O-I- prior to their wedding and the bona fida of their marriage.

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

We adopt and affirm the Director's decision. *See 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) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision.").

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 the Petitioner resided with O-I-. As noted above, "residence" means a person's principal, actual dwelling place, without regard to intent. Section 101(a)(33) of the Act. The preamble to the 1996 interim rule, which confirmed that this definition of residence is binding for VAWA self-petitioners, specifies that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . 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).

Here, the record does not show that O-I-'s principal, actual dwelling place was with the Petitioner. Although we acknowledge the Petitioner's statements regarding not wanting to list O-I- on the lease until his divorce from his spouse was finalized, the Petitioner has not provided sufficient documentation to establish joint residence with O-I- as the Act and regulation require; adding O-I- as a resident to the Petitioner's lease, after O-I- purportedly had moved out, does not establish joint residence. Furthermore, with respect to the statement provided by the Petitioner's friend confirming that he had knowledge that the Petitioner and O-I- lived together, we concur with the Director that this statement has limited probative value as it is general in nature, lack specific dates or details, and does not provide any description of the actual residence evincing the Petitioner's life there with O-I-. Nor do the untranslated and undated letters addressed to O-I- at the Petitioner's address in [redacted] Florida, and the marriage certificate referencing two separate addresses for the Petitioner and O-I-, establish that O-I-actually resided with the Petitioner.

The Director further determined that the Petitioner had not demonstrated that he married O-I- in good faith, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. As the Petitioner's inability to establish that he resided with O-I- is dispositive of his 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). In conclusion, the Petitioner has not established that he resided with his LPR spouse. Consequently, he has not demonstrated that he is eligible for immigrant classification under VAWA. The petition will therefore remain denied.

ORDER: The appeal is dismissed.