U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18685551

Date: MAY 24, 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 we summarily dismissed the Petitioner's appeal. The matter is now before us on motion to reopen and reconsider. Upon review, we will dismiss the motions.

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 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)(A)(iii) of the Act. Among other things, 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). 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 H-K-[1], a U.S. citizen, in [redacted] 2016. In Part 10 of his VAWA petition, the Petitioner indicated that he lived with H-K- from [redacted] 2016, to November 2017. In his July 2018, declaration, the Petitioner detailed that in the summer of 2017, his spouse started showing different behaviors; H-K- started hiding her phone from him and would not answer his calls, and her behaviors were causing him to feel depression and frustration. Eventually, the Petitioner asserts that he found some text messages on H-K-'s phone that indicated that she was back with her previous boyfriend. After confronting her about it, H-K- admitted having feelings for her previous boyfriend and she "had one foot outside the door." The Petitioner submitted his [redacted] 2016, marriage certificate listing the same address for both the Petitioner and H-K-.

The Director issued a request for evidence (RFE), stating, among other things, that the evidence did not establish that the Petitioner and H-K- had resided together after marriage. Specifically, the Petitioner's affidavit lacked details regarding the residential period with H-K-, such as details of the residence, their personal belongings, or their shared daily routine. Furthermore, the Director noted that the marriage certificate in the record did not establish that the Petitioner and H-K- resided together after the marriage. The Director sought documentation that the Petitioner resided with his spouse, providing examples of evidence that may establish the couple's shared residence.[2] In response to the Director's request pertaining to evidence of joint residence, the Petitioner submitted copies of two undated envelopes addressed to H-K- at the Petitioner's address.

The Director denied the petition, finding, in pertinent part, that the Petitioner had not established joint residence with H-K-. Specifically, the Director noted that the Petitioner's affidavit lacked probative details surrounding "your involvement with your spouse prior to the marriage or circumstances and events demonstrating your involvement during the marriage." The Director also noted that pieces of mail addressed to H-K- indicated a claimed marital address but the mail did not establish that the Petitioner and his spouse actually resided together.

On appeal, the Petitioner submitted a brief and asserted that he was eligible for the benefit sought. Specifically, he asserted that the marriage certificate is "the primary evidence to establish the existence of the relationship" and the Petitioner's affidavit and the mail addressed to H-K- at the Petitioner's address establish joint residence.

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.").

[1] We use initials to protect the identities of the individuals in this case.
[2] The Director also requested additional evidence to establish: a good faith marriage between the Petitioner and H-K-, battery or extreme cruelty by the U.S. citizen spouse, and the Petitioner's good moral character.

The arguments 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 H-K-. 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 H-K-'s principal, actual dwelling place was with the Petitioner. The Petitioner's affidavit 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 H-K-. Nor do the copies of undated mail addressed to H-K- at the Petitioner's address establish that H-K- resided with the Petitioner. The Petitioner has not established joint residence with H-K- as the Act and regulation require and we lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). *See* section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D).

The Director further determined that the Petitioner had not demonstrated that he married H-K- in good faith, that he had been battered or subject to extreme cruelty perpetrated by his U.S. citizen spouse, and that he is a person of good moral character, as required by section 204 (a)(1)(A)(iii) of the Act. As the Petitioner's inability to establish that he resided with H-K- 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 U.S. citizen spouse. Consequently, he has not demonstrated that he is eligible for immigrant classification under VAWA. The petition will therefore remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.