



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 18589492

Date: MAY 31, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner, a citizen of Mexico, 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 filed his petition within two years of his U.S. citizen spouse's death, resided with his U.S. citizen spouse or entered into the marriage in good faith. The matter is before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

The spouse of U.S. citizen who died within the two years immediately preceding the filing of the self-petition may benefit from the self-petitioning provisions. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act. A petitioner must also demonstrate, among other requirements, that they entered into the marriage in good faith and resided with the abusive spouse during the marriage. Sections 204(a)(1)(A)(iii)(I)(aa), (II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(ix), (i)(D). Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(i), (vii).

In regard to joint residence, the Act defines residence as a person's general abode, which means the person's "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 in fact resided together during the marriage. 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 petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although 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).

## II. ANALYSIS

The record reflects that the Petitioner, a citizen of Mexico, married M-V-,<sup>1</sup> a U.S. citizen, in [REDACTED] 2011. In May 2018, he filed the instant VAWA petition based on this marriage.<sup>2</sup> In January 2020, the Director notified the Petitioner of USCIS's intent to deny the petition because the petition was filed more than two years after the death of M-V-. In his personal statement, the Petitioner indicated that M-V- died on July 18, 2013; however, he did not submit a death certificate. The intent to deny also noted that the Petitioner submitted inconsistent documentation regarding the address of the couple's shared residence. The Director further noted that the evidence submitted to demonstrate that he married M-V- in good faith, consisting of photos and affidavits of support, did not provide sufficient evidence of the interactions between the Petitioner and M-V- before and during the marriage. The Director requested that the Petitioner submit the death certificate and provide sufficient credible evidence demonstrating that he entered into the marriage in good faith and that he resided with M-V- during the marriage.

In March 2020, the Petitioner requested and was granted a 60-day extension to respond. The Petitioner did not submit any additional evidence. In January 2021, the Director denied the petition, determining that Petitioner did not meet his burden of proof to demonstrate his eligibility by a preponderance of the evidence.

On appeal, the Petitioner states that due to the unforeseen pandemic, he was unable to obtain any additional evidence. Upon de novo review, we adopt and affirm the Director's decision with the comments below. See, e.g., *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting or affirming the decision below "in whole or in part, when [the Board is] in agreement with the reasoning and result of that decision"); see also *Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (noting that, "[a]s a general proposition, if a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by" the decision below, "then the tribunal is free to simply adopt those findings" provided the tribunal's order reflects individualized attention to the case"). While the Petitioner claims COVID-19 restrictions prevented him from obtaining the requested evidence, as of the date of this decision, the Petitioner still has not submitted any additional evidence. Further, USCIS COVID flexibilities do not apply requests or notices issued prior to March 1, 2020. See *USCIS Extends Flexibility for Responding to Agency Requests*, available at: <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1> (last accessed on May 25, 2022).

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<sup>1</sup> We use initials to protect the privacy of individuals.

<sup>2</sup> The Petitioner filed an initial petition based on this marriage in 2012. The Director denied the petition, concluding that the Petitioner did not establish that he resided with M-V-, entered into the marriage in good faith, or was a victim of battery or extreme cruelty.

As the Petitioner has not provided sufficient evidence that he filed his petition up to two years following his U.S. citizen spouse's death, resided with his U.S. citizen spouse, or entered into the marriage in good faith, he has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER:       The appeal is dismissed.