U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18589492

Date: MAY 31, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a citizen of Georgia, 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 resided with his U.S. citizen spouse or that he entered into the marriage in good faith. On appeal, we determined that the Petitioner did not overcome the basis for the Director's denial. The Petitioner has filed a motion to reopen and reconsider our decision. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Id. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, among other requirements, that they resided with the abusive spouse during the marriage. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D). 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).

II. ANALYSIS

We incorporate our prior decision by reference and will repeat only certain facts as necessary here. The record reflects that the Petitioner met his spouse, D-D-,[1] in October 2016 and they were married in [redacted] 2016. The Petitioner asserted that in November 2016, he and D-D- moved into his uncle's apartment in [redacted] New York. He stated that he and D-D- were uncomfortable sharing a small space with others which caused disagreements between them. He indicated that D-D- stayed "most of the time with her parents or was staying at her previous place." He related that he and D-D- had plans to relocate in February 2017 to a friend's apartment in [redacted] and began using the [redacted] apartment as their mailing address in January 2017; however, they never moved to [redacted] because his friend delayed vacating the residence. The record contained a Form G-325A filed by the Petitioner with a March 2017 adjustment of status application reflecting that he lived at the [redacted] apartment from July 2015 to March 2017 and at the [redacted] address, which he stated in his VAWA petition was merely a mailing address, beginning in March 2017. Additionally, the record included the Petitioner's marriage license issued on [redacted] 2016, listing a third address for D-D- in [redacted].[2]

The Director determined that the Petitioner provided insufficient and contradictory evidence of residence with his spouse during their marriage. The Director also determined that the Petitioner did not establish that his marriage was entered into in good faith.

In our previous decision dismissing the Petitioner's appeal, we concluded that the Director correctly determined that the Petitioner submitted insufficient evidence to establish his joint residence, the [redacted] apartment, was the couple's "principal, actual dwelling" during their marriage. Further, we found that the limited new information submitted on appeal introduced inconsistencies to the record. Specifically, although the Petitioner contended that D-D- resided with him at the [redacted] apartment, he also indicated that she moved out of the [redacted] apartment on an unspecified date and frequently stayed with her parents, a friend, and at her former residence. The Petitioner also stated for the first time that D-D- moved into the [redacted] apartment in December 2016 rather than [redacted] 2016 and provided no explanation for this change; on motion, he indicates that this was a typographical error. Additionally, a review of the record indicated that D-D- used a [redacted] address on their [redacted] 2016 marriage license instead of the [redacted] address. We also took notice of the Petitioner's assertion that it was not possible for him to produce documentary evidence of their residence because the [redacted] apartment belonged to his uncle and that his affidavits are sufficient to establish his joint residence with D-D-. While we acknowledged that documentary evidence is not required,[3] we found that the Petitioner's affidavits submitted with the petition and on appeal did not

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[1] Initials are used throughout this decision to protect the identities of the individuals.

[2] On motion, the Petitioner correctly states that in our prior decision, we indicated that the date of the marriage was [redacted] 2016, rather than [redacted] 2018.

[3] Although the Act and the regulations do not indicate a specific time frame during the marriage for a VAWA petitioner to establish joint residence with the U.S. citizen spouse, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, 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 was binding for VAWA self-petitioners, clarified 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

contain sufficient probative details of sharing a principal dwelling to demonstrate joint residence. We concluded that the Petitioner did not establish by a preponderance of the evidence that he resided with his U.S. citizen spouse during their marriage. In making this determination, we considered the absence of probative testimony from the Petitioner, statements from the Petitioner's friends, and the aforementioned unresolved inconsistencies.[4]

On motion, the Petitioner claims that we afforded minimal weight to the evidence provided which contradicts Congress' intent in specifying the "any credible evidence" standard of proof for VAWA petitions. Although the Petitioner is correct that we must consider any credible evidence relevant to a 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). The Petitioner also contends that he provided detailed and credible evidence to establish the joint residence requirement and submits additional evidence including a self-affidavit and declarations from acquaintances.

In his self-affidavit, the Petitioner states that we incorrectly found that he did not provide the date that D-D- left their [redacted] residence despite the fact that he stated in several declarations that they lived together from November 2016 to April 2017. On motion, the Petitioner states that April 6, 2017, is the specific date that D-D- left their residence. The Petitioner also reiterates statements relating to the couple's decision to reside with his uncle and provides the following additional information, in pertinent part, about his marriage with D-D-:

> Some days we would just stay home, we would order in or D-D- would cook, and we would have romantic day at home, with wine and music; or we would just have a movie night, we would rent different movies and watch them together while we were laughing, having wine and enjoying each other's company . . . Many weekends when we would go to my friends' houses for dinner and just hang out, those nights D-D- insisted that my friends show her how to cook traditional Georgian meals. On top of that she tried learning Georgian language, a very difficult language to learn, at least learn some words that she could say to my friends. I tried my best to show my appreciation with surprise gifts that I would give her randomly, gifts that I knew she would like because when I saw them, they instantly reminded me of her . . . I felt awfully bad that our move to new apartment was getting delayed and that we could not have privacy we liked and desired. [Petitioner] Aff. at 4-6.

With respect to inconsistencies in the record, the Petitioner states, in pertinent part, the following:

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for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, affidavits or any other type of relevant credible evidence may be submitted. 8 C.F.R. § 204.2(c)(2)(iii).

[4] The Petitioner also did not provide details about the [redacted] residence, other than its limited size, the third-party affidavits in the record similarly did not include probative details of the claimed joint residence, and the bank statement submitted was afforded little evidentiary weight because it reflected the [redacted] address that the Petitioner admits was never a joint residence and used only as a mailing address.

> [T]he statement I submitted with the RFE states that D-D- and I started living together from November 30, 2016 . . . I also stated that D-D- insisted to move from that house, was using that reason to not come home and was staying with parents of friend, [name omitted] - meaning that our living arrangements were creating problems in our relationship and when D-D- was upset she would stay with her parents or a friend, but I never stated that she maintained separated residence or moved out. [Petitioner] Aff. at 2-3.
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> When my initial statement said that I decided to divorce my wife, it was an error in translation, it was supposed to be translated as I decided to separate and even if the statement said that I decided to divorce her, it means that I decided to file for divorce but I never did, accordingly marriage has not been legally terminated. [Petitioner] Aff. at 6-7.
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> When D-D- and I filled out the application prior to getting married we were asked for our ID's [sic] and the information on the marriage license were entered based on our ID's [sic]. We informed the clerk that our marital address was [address omitted], therefore our marriage license was issued to both D-D- and me at our marital address in [redacted] (please see the left corner of marriage certificate). [Petitioner] Aff. at 6-7.
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> Nowhere in any of my statements did I indicate that D-D- maintained her principal dwelling . . . [p]roblems in our relationship occurred sooner than I expected . . . [b]ut I also stated that we had worked on our differences and our relationship got better and we had a dinner to celebrate our marriage in January 2017." [Petitioner] Aff. at 16.

The Petitioner also submits additional declarations from acquaintances. L-K-, who met the Petitioner and D-D- through mutual friends, indicates that she remembers "many sweet and unforgettable, fun events" with the couple, including American and Georgian holidays. G-G-, a childhood friend of the Petitioner, visited the couple's apartment "a few times" and states that "due to the fact that they had one small room . . .our gatherings to their apartment were limited but we have spent many memorable evenings with these soulmates." G-S-, a friend of the Petitioner, maintains that he "celebrated many holidays and different events" with the couple, including a Christmas dinner in 2016 where D-D- prepared Georgian dishes. V-I-, a friend of the Petitioner, states that he "spent many events with these beautiful people . . . I remember her learning Georgian meals to please . . .his friends each time when we were around."

Here, the Petitioner's explanations made on motion do not resolve the inconsistencies in the record regarding whether the [redacted] apartment was the couple's "principal, actual dwelling" during their marriage. While the Petitioner claims that the inconsistencies regarding the couple's living arrangements are primarily due to translation issues, we are unable to determine the amount of time that the Petitioner and D-D- resided together at the [redacted] residence as the Petitioner's statements indicate that D-D- spent some nights away from the [redacted] apartment or most of the time with her parents, a friend, or at her previous residence. Moreover, the record continues to lack other evidence of joint residence which, as stated above, may include employment, school, or medical records;

documents relating to housing, insurance policies; or any other credible evidence. 8 C.F.R. § 204.2(c)(2)(iii). In addition, while third party affiants indicated that the Petitioner and D-D- lived together at the claimed shared address and that they visited the residence for gatherings, their statements lacked probative details including dates or specific details about home furnishings, neighbors, daily routines, or any of their belongings.

Based on the foregoing, the Petitioner has not overcome our prior decision dismissing his appeal of the Director's denial. As the Petitioner has not submitted new evidence sufficient to establish joint residence during the marriage as the Act and regulation require, he has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. Therefore, he has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.