U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 19260911

Date: SEP. 07, 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 the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates, among other requirements, that they were battered or subjected to extreme cruelty perpetrated by the spouse and have resided with the spouse. Section 204(a)(1)(A)(iii) of the Act. Section 101(a)(33) of the Act provides that, as used in the Act, "[t]he term 'residence' means the place of general abode . . . [a person's] principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. § 1101(a)(33). Evidence showing that the petitioner and the abusive spouse resided together may include employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, affidavits, or any other type of relevant credible evidence of residency. 8 C.F.R. § 204.2(c)(2)(i), (iii). While 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).

The Act bars approval of a VAWA petition if, while in removal proceedings, the petitioner entered into the marriage giving rise to the petition, unless the petitioner has resided outside the United States for a period of two years after the date of marriage or establishes by clear and convincing evidence that the marriage was entered into in good faith. *See* sections 204(g) and 245(e)(3) of the Act, 8 U.S.C. §§ 1154(g) and 1255(e)(3) (outlining the restriction on, and exception to, marriages entered into while in removal proceedings); *see also* 8 C.F.R. § 204.2(c)(1)(iv) (providing that a self-petitioner "is required to comply with the provisions of . . . section 204(g) of the Act"). Clear and convincing evidence is that which, while not "not necessarily conclusive, . . . will produce in the mind . . . a firm belief or conviction, or . . . that degree of proof which is more than a preponderance but less than beyond a reasonable doubt." *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966).

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). 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). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

## II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Brazil, entered the United States in 2009 on a B1/B2 visitor visa. She married D-, a U.S. citizen, in 2017, and filed the instant VAWA petition in October 2018. She was placed in removal proceedings before an Immigration Judge in 2015, which remain pending.

The evidence in the record before the Director included a personal statement authored by the Petitioner asserting that she met D- while she was in prison and he was visiting another person. She asserted that after she was released from prison, she and D- saw each other on weekends and talked every day by phone. She explained that during their courtship she had been renting a room in a family home and D- was living in a one-room apartment with his son with special needs. The Petitioner stated that she did not move to D-'s apartment after their marriage because it was too small and only had one bedroom, although she did spend the night with him when her work schedule allowed her to do so. She further explained that D- sometimes came to see the Petitioner where she lived, but that this was not as common due to D-'s responsibility for his son. She contended that they planned to earn enough money to move in together. The Petitioner's statement also described finding D- in bed with a friend in a home that she considered hers.

The Director denied the VAWA petition, determining, among other findings, that the Petitioner did not establish by a preponderance of the evidence that she resided with D-, as required to establish eligibility for VAWA classification.

### A. Joint Residence

On appeal, the Petitioner claims that she was in a good faith marriage but was unable to live full-time with her spouse due to their employment and family circumstances, specifically the proximity of their jobs to their individual apartments and the space available for the couple and D-'s child. She argues that it has become increasingly common for couples to live apart. The Petitioner's appeal submission includes a brief, a new personal statement, articles about couples who live apart, and copies of previously-submitted evidence. In the personal statement, the Petitioner asserts that the couple decided to maintain separate homes until they were more financially stable due to their commutes, but tried to spend as much time together as they could while not risking their jobs and incomes.

The arguments made by the Petitioner on appeal are not sufficient to establish her shared residence with D-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and the implementing regulation at 8 C.F.R. § 204.2(c)(1)(i)(C). Although the Petitioner asserts that she resided with D- part of the time, the preamble to the interim rule regarding the self-petitioning provisions of VAWA cited to section

101(a)(33) of the Act as the pertinent definition of "residence" and clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home in the United States 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); see also *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950) (explaining, in the U.S. Supreme Court decision that was ultimately codified into the definition of "residence" in the Act, that in contrast to domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode). She also states that her financial situation kept her from living with D-, but the Petitioner does not provide any legal authority that enables us to waive or otherwise disregard the requirement of section 204(a)(A)(iii)(II)(dd) of the Act that she resided with D-. *See* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 376 (explaining that the petitioner bears the burden to establish eligibility, and must do so by a preponderance of the evidence).

B. Remaining Eligibility Requirements

The Petitioner also argues on appeal that she was in a good faith marriage and is a person of good moral character. Additionally, the record reflects that the Petitioner married D- while she was in removal proceedings. As stated above, the Petitioner is not eligible for immigrant classification under section 204(g) of the Act unless she can show by clear and convincing evidence, pursuant to section 245(e)(3) of the Act, that her marriage was entered into in good faith.

Because the Petitioner's inability to establish that she resided jointly with D- is dispositive of her appeal, we decline to reach and hereby these additional grounds. *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).

## III. CONCLUSION

The Petitioner has not established that she resided with her U.S. citizen spouse, as required. Consequently, she has not demonstrated that she is eligible for immigrant classification pursuant to VAWA.

**ORDER:** The appeal is dismissed.