U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29586288

Date: DECEMBER 13, 2023

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), concluding that the Petitioner did not establish he shared a residence with his U.S. citizen spouse, entered into a qualifying marriage to his spouse in good faith, or that he was battered or subjected to extreme cruelty by his spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that he has established eligibility for the benefit sought. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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

A VAWA petitioner must establish, among other requirements, 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 in fact resided together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). 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). In these proceedings, 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 Georgia, entered the United States in 2009 with a visitor's visa – he was accompanied by his former spouse and child.[1] The Petitioner asserts that he and his former spouse separated in 2010. In 2012, he married C-C-,[2] a U.S. citizen. In June 2014, an immigrant relative petition filed on the Petitioner's behalf was approved but the Petitioner's adjustment application was denied because he was found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.[3] In November 2014, he filed the instant VAWA petition. Through a notice of intent to deny (NOID), the Director informed the Petitioner that the record contained inconsistent evidence relating to his claim of joint residence with C-C-. Specifically, the Director noted that in 2019, USCIS conducted an investigation relating to the Petitioner's claimed residence history and obtained evidence indicating the following: (1) while the Petitioner asserted that he resided at a named address with C-C-, the superintendent of the apartment building identified a photo of the Petitioner's former spouse and indicated that the former spouse and the Petitioner had lived at the property for approximately seven years; (2) neighbors interviewed by USCIS officers positively identified a photo of the Petitioner's former spouse as a resident but were unable to identity a photo of C-C-; and (3) neighbors indicated that the Petitioner and his former spouse lived at the residence with at least two children and had lived at the residence for approximately seven years – one neighbor also noted that her child and the Petitioner's child were friends and had been attending the same school for seven years.

In response to the NOID, the Petitioner submitted additional evidence and argued that the accounts of the individuals who were interviewed were unreliable. The Director denied the VAWA petition, concluding that the Petitioner did not submit evidence to overcome the adverse information and inconsistencies in the record or establish that he resided with his spouse during the marriage. The Petitioner appealed the decision to this office. On appeal, the Petitioner argues that the investigative report was based on incorrect facts and interviews with unqualified witnesses.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). We note here that USCIS may take into account all relevant factors in making its discretionary determination per 8 C.F.R. § 245.24(d)(11) (emphasis added), and reliance on an investigation report in adjudicating discretionary relief is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. See, e.g., Matter of Grijalva, 19 I&N Dec. 713, 722 (BIA 1988)

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[1] The record contains inconsistent documentation regarding the nature of the Petitioner's marriage to his first spouse. In his non-immigrant visa application, the Petitioner indicated that he was married; however, in his 2013 adjustment application, he claimed that the marriage to his U.S. citizen spouse was his only marriage. When confronted with this inconsistency, he claimed that his marriage to the mother of his child was a common-law marriage.

[2] We use initials to protect the privacy of individuals.

[3] The Petitioner was found inadmissible for misrepresenting his marital status on his nonimmigrant visa application. He submitted the Form I-601, Application for Waiver of Grounds of Inadmissibility, seeking a waiver of his inadmissibility, which was denied.

("[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). Here, the Petitioner has not submitted any evidence on appeal to resolve the ambiguity in the record regarding his apparent cohabitation with his former spouse and the lack of corroborative evidence of joint residence with C-C- nor has he made any assertions of factual or legal error regarding the same. As the Petitioner has not addressed the deficiencies in the record, the documentary evidence remains insufficient to establish by a preponderance of the evidence that he resided with his U.S. citizen spouse as required by the Act. Consequently, he has not demonstrated that he is eligible for immigrant classification under VAWA.[4]

ORDER: The appeal is dismissed.

[4] As noted above, the Director determined the Petitioner did not establish that he entered into a qualifying marriage in good faith or that he was battered or subjected to extreme cruelty by his spouse. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve these additional issues. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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).