U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24911505

Date: FEB. 27, 2023

Motion on Administrative Appeals Office 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 that she shared a residence with her U.S. citizen spouse as her principal and actual dwelling. We dismissed a subsequent appeal, and the matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motion.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. Among other requirements, a VAWA 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 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).

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. at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

In our prior decision, incorporated here by reference, we agreed with the Director's finding that the Petitioner did not establish by a preponderance of the evidence that she shared a residence with her spouse, C-M-P-,[1] or that C-M-P-'s apartment was her principal dwelling. We also noted that the Petitioner conceded that she lived between C-M-P-'s apartment and her aunt's home because of the unclean state of the apartment, lack of space for her and her daughter,[2] and C-M-P-'s abusive treatment. Further, we highlighted that the Director acknowledged the Petitioner's contention that she considered C-M-P-'s apartment her primary residence but reiterated that an intended domicile is distinguished from an actual place of abode, and the Petitioner's actual place of abode was her aunt's residence.

On motion, the Petitioner asserts that the Director misinterpreted the Act's definition of "residence." Specifically, she contends that the terms "primary" and "principal" were used interchangeably by the Director, and the Director erroneously concluded that because she lived at her aunt's home four days out of the week, "this temporal element meant that her aunt's house is her 'principal/primary' residence." In addition, citing the Merriam-Webster definition of "principal" as "the most important, consequential, or influential" and "primary" as "first rank importance or value" – the Petitioner contends that "the Director has unilaterally replaced the 'principal' requirement to mean that a majority of the time Petitioner resides per week must be with C-M-P-." She further contends that "[l]iving together with C-M-P- was the most important and consequential actual dwelling place because while living there, she had to make the difficult decision of being away from her daughter." On motion, the Petitioner also provides further description of her daily activities at C-M-P-'s apartment as well as an explanation regarding her previously submitted tax documentation.

The Petitioner's contentions with respect to the Act's definition of "residence" to be unpersuasive. 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). Here, the record demonstrates that the Petitioner resided at C-M-P-'s home for three days a week while continuing to maintain a general place of abode for herself and her daughter at her aunt's home. As the Petitioner has not submitted sufficient evidence demonstrating, by a preponderance of the evidence, that she did not maintain a general place of abode at her aunt's home, the Petitioner has not established that she resided with her U.S. citizen spouse, as required.

[1] We use initials to protect the privacy of individuals.
[2] The Petitioner asserted that her daughter only visited C-M-P-'s apartment "every now and then."

The Petitioner has not provided new evidence on motion to overcome our prior determination or established that our determination was based on an incorrect application of law or policy. Accordingly, the motion to reopen and reconsider is dismissed and the VAWA petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.