U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25985004

Date: JUNE 7, 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 she shared a residence with her U.S. citizen spouse, entered into a qualifying marriage to her spouse in good faith, or that she was battered or subjected to extreme cruelty by her spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that she 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 o*f 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 Nigeria, was previously married, and in 2011, she divorced her former spouse. In August 2012, she entered the United States with a visitor's visa, and in [redacted] 2013, she married F-T-,[1] a U.S. citizen. In November 2019, she filed the instant VAWA petition based on this marriage. Through a request for evidence (RFE), the Director informed the Petitioner that the record contained inconsistent evidence relating to her claim of joint residence with F-T-. Specifically, the Director noted that in 2018, USCIS conducted an investigation relating to the Petitioner's claimed residence history and obtained evidence indicating the following: (1) while the Petitioner asserted that she resided at a named address with F-T- from 2012 to 2017, the leasing office representative for the property positively identified a photo of the Petitioner's former spouse, and not F-T-, as the individual who signed the lease agreement and resided at the residence, along with their four children; and (2) while the Petitioner asserted that she resided at a second property with F-T- in 2018, USCIS officers observed the Petitioner's former spouse at the residence, neighbors interviewed by USCIS officers positively identified a photo of the Petitioner's former spouse as a resident, but neighbors were unable to identity a photo of F-T- and the lease agreement did not list F-T- as a tenant.

The Director denied the petition, concluding that the Petitioner did not submit evidence to overcome the adverse information and inconsistencies in the record or establish that she resided with her spouse during the marriage.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. See Matter of P. Singh, Attorney, 26 I&N Dec. 623 (BIA 2015) (citing Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Chen v. INS, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case). Here, the Petitioner has not submitted any evidence on appeal to resolve the ambiguity in the record regarding her apparent cohabitation with her former spouse and the lack of corroborative evidence of joint residence with F-T-, nor has she 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 she resided with her U.S. citizen spouse as required by the Act. Consequently, she has not demonstrated that she is eligible for immigrant classification under VAWA.[2]

ORDER: The appeal is dismissed.

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

[2] As noted above, the Director determined the Petitioner did not establish that she entered into a qualifying marriage in good faith or that she was battered or subjected to extreme cruelty by her spouse. Since 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).