U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26425323

Date: JUN. 13, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not meet his burden of proof to establish that he resided with his U.S. citizen spouse, that he entered his marriage in good faith, or that he was subjected to battery or extreme cruelty by his U.S. citizen spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

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 have resided with the spouse. Section 204(a)(1)(A)(iii) of the Act. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), 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." 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 Petitioner is a citizen and national of Uganda who entered the United States in August 2017 as a J-1 non-immigrant to attend the Association for Clinical Pastoral Education. The Petitioner married

D-H-,[1] a U.S. citizen, in [redacted] 2019 and filed the current VAWA petition based on that relationship. In his personal statement before the Director, the Petitioner stated that he began looking for a spouse using dating applications but was unsuccessful. After hearing he was looking for a spouse his friend from Minnesota contacted him about a woman who was willing to marry him. The Petitioner stated that after a few weeks of texting with one another he flew to Minnesota to meet and marry D-H-. As evidence of joint residence, the Petitioner initially submitted a personal statement, a copy of a marriage license registration, a copy of the Petitioner's Massachusetts driver's license and a copy of a Minnesota Driver's license for D-H-. The Director found the evidence insufficient and requested additional documentation to meet the joint residence requirement. In response, the Petitioner provided an additional personal statement, a piece of open mail from [redacted] County, affidavits from third parties, and an affidavit from J-G- claiming to have been the Petitioner's "landlady" at the claimed marital address.

On appeal, the Petitioner provides an additional personal statement where he states that he has met his burden of proof and highlights the evidence submitted before the Director. In addition, the Petitioner reiterates the protections afforded to VAWA petitioners when evidence is unavailable due to abuse. Upon de novo review, the Petitioner has not established that he resided with his U.S. citizen spouse for the purposes of the VAWA petition. At the outset, we note that 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).

In his statements before the Director, the Petitioner states that he resided with D-H- in Minnesota for three days following their wedding in [redacted] 2019, however, he had to return to Massachusetts to work with the understanding that his spouse would join him in Massachusetts the following month. The Petitioner further states that D-H- never moved to Massachusetts as promised and the relationship deteriorated. The Petitioner's combined statements, before the Director and on appeal, indicate that the trip to Minnesota was undertaken for the purpose of meeting D-H- and getting married. As such, the claimed marital residence in Minnesota does not fall within the definition of the Petitioner's principal, actual dwelling place. As additional evidence of joint residence, the Petitioner provided an affidavit from P-N- which states that the affiant helped the Petitioner and D-H- move some house items to the claimed marital residence, but does not state that the couple, in fact, lived together or otherwise describe any instances where P-N- spent time with the Petitioner and D-H- at the residence. In addition, the Petitioner provided an affidavit from J-G-, the landlady for the claimed marital residence, who stated that the Petitioner and D-H- were respectful, had no complaints from neighbors and paid their last rent payment in early December 2019 but does not describe any instance in which the affiant directly interacted with the Petitioner or his spouse at the claimed place of residence. We

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

do not minimize the affidavits from third parties, including J-G-, provided by the Petitioner or the other documents submitted as evidence of joint residence, however, when viewed in the context of the Petitioner's statements, the evidence is insufficient to establish that the Petitioner and D-H- resided with one another as required for immigrant classification under VAWA. While we must consider any credible evidence of joint residence, the affidavits and marriage license do not overcome the Petitioner's own statements regarding his need to return to Massachusetts shortly after the wedding to prepare his home for his spouse and to continue living and working in the same place he did prior to his visit to Minnesota. Considering the evidence in its entirety, we conclude that the Petitioner has not met his burden to show that he and D-H- resided with one another within the meaning of section 101(a)(33) of the Act.

The Petitioner has not established that he resided with his U.S. citizen spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding good faith marriage and battery or extreme cruelty. *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). Accordingly, the Petitioner has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.