U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25014474

Date: MAR. 2, 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), and the matter is before us on appeal. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office reviews 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 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). 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 did, in fact, reside together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). Evidence of joint residence may include employment, school, or medical records; documents relating to housing, such as deeds, mortgages, rental records, or utility receipts; birth certificates of children; insurance policies; or any other credible evidence. 8 C.F.R. § 204.2(c)(2)(iii).

II. ANALYSIS

The Petitioner, a native and citizen of Nigeria, filed her VAWA petition in December 2019 based on her marriage to K-W-,[1] a U.S. citizen. The Director denied the petition, determining that the Petitioner had not demonstrated that she and K-W- had resided together, as required. Specifically, the Director explained that the record reflected that her primary residence during the marriage was in [redacted]

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

[redacted] Minnesota, while K-W- resided in [redacted] Illinois. The Director further concluded that although the Petitioner maintained that she had spent time with K-W- in [redacted] including staying at K-W-'s friend's home when she visited K-W- in [redacted], these stays amounted to visits and were insufficient to establish that she resided with K-W-.

On appeal, the Petitioner reasserts that she resided with K-W- for 7 days between the time he proposed and when they were married. 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).

On appeal, the Petitioner correctly argues that USCIS updated its interpretation of the requirement for shared residence to include that "the petitioner is residing or has resided with the abuser at any time in the past."[2] Here, however, the Petitioner has not established that she actually resided with K-W- either before or after the marriage ceremony. 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).

We acknowledge the Petitioner's new psychosocial evaluation where the licensed social worker states that the Petitioner told her that she lived with K-W- in [redacted] for seven days between February 2019 when he proposed, and [redacted] 2019 when they got married. We also acknowledge the Petitioner's updated affidavit in which she reiterates that she lived with K-W- "and in sharing a residence with him, I endured all the abuse." However, despite the Petitioner's assertions, she has not established that she shared a residence with K-W-. Rather, the record supports the conclusion that the Petitioner resided in Minnesota with her three school-aged children. Indeed, the only documentation that the Petitioner submitted which reflected an Illinois address was a photocopy of K-W-'s social security card and his driver's license. She has not submitted any other independent evidence, such as employment or rental records or any utility receipts, reflecting her residence with K-W-. We further note that although the Petitioner submitted her own affidavit, she did not submit any third-party affidavits attesting to her and her abusive spouse living together at the claimed shared address. Moreover, she did not submit any third-party affidavits providing probative details about visits to the residence, gatherings, dates, specific descriptions about home furnishings, belongings, neighbors, or daily routines.

[2] 3 *USCIS Policy Manual*, D.2(F), https:// www.uscis.gov/policymanual.

The Petitioner stated that she explained her situation to her former clinician, who decided to write a narrative that was contrary to what the Petitioner told her. Likewise, counsel argues that the Petitioner provided detailed testimony to her former clinician about the times she lived with her spouse, but the clinician omitted that information from the first psychosocial assessment. Counsel submits his own separate affidavit supporting this assertion. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). In this case, counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations, including from the clinician. And the Petitioner has not submitted any such documentation from the clinician. Counsel further argues that prior to submission, the Petitioner "was not given a chance to review" the psychosocial assessment to confirm that it "adequately and accurately reflected what she stated to the clinician." However, we note that the psychosocial assessment was completed in April 2022 and submitted by the Petitioner in May 2022.

In the end, while we are sympathetic to the circumstances the Petitioner faced during her marriage to K-W-, she has not met her burden of establishing that she resided with her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. *See 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). Consequently, she has not demonstrated her eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.