U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25672353

Date: MAY 30, 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, after providing the Petitioner notice, revoked the approval of the VAWA petition, concluding that the record did not establish that the Petitioner resided with his U.S. citizen spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and evidence already contained within the record, asserting that the Director erred in revoking approval of the petition.

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

Pursuant to section 205 of the Act, 8 USC § 1155, the Director may revoke the approval of any petition approved under section 204 of the act, "at any time, for what [they] deem to be good and sufficient cause." The regulations provide for revocation upon notice to the petitioner "when necessity for the revocation comes to the attention" of the Director. 8 C.F.R. § 205.2.

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). 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).

II. ANALYSIS

The Petitioner is a citizen and national of France and Israel who entered the United States as a visitor in May 2011. The Petitioner married C-F-,[1] a U.S. citizen, in [redacted] 2014 and filed the current VAWA petition based on that relationship. The VAWA petition was approved in April 2019. However, at the time of USCIS' adjudication of the related Form I-485, Application to Register Permanent Residence or Adjust Status, the Director determined that there was good and sufficient cause to revoke the approval of the VAWA petition. Namely, information obtained from a USCIS investigation indicated that no one other than C-F- and her son had resided at the claimed marital address for several years, including during the period of the Petitioner's marriage to and claimed joint residence with C-F-. The Director issued a notice of intent to revoke (NOIR) providing the Petitioner with the opportunity to rebut the derogatory information regarding the joint residence and present additional evidence in support of joint residence, good faith marriage and good moral character requirements for VAWA. The Petitioner timely responded, but the Director ultimately determined that the Petitioner had not established that he had resided with C-F-, as required, and revoked approval of the petition.

Upon de novo review, we find that the Director had good and sufficient cause to revoke the approved petition and that the Petitioner has not met his burden of proof to overcome the derogatory information in the record regarding his claimed joint residence with C-F-.

In his petition, the Petitioner indicated that he resided with his spouse at their marital residence in New Jersey from August 2014 to October 2015. In his written statements before the Director, he stated that they decided to move in together at C-F-'s New Jersey residence in August 2014 prior to their marriage and that they continued to live there until October 2015. However, as the Director explained, information obtained from the landlord of the claimed New Jersey marital residence during a USCIS investigation indicated the Petitioner's former spouse, C-F-, and her son were the sole residents for many years, including during the claimed period of joint residence from August 2014 to October 2015, contrary to the Petitioner's statements and the some of the evidence provided in support of the petition.

We acknowledge the Petitioner's explanation that he did not meet the landlord who lived in the apartment below them, but do not find his explanation reasonable or sufficiently persuasive, particularly as the record indicates that he claimed to have resided at the two-family residence for more than a year and that he completed renovation work on the apartment during that period. We also note the Petitioner's general assertions on appeal that he has difficulties with dyslexia and memory. However, these medical conditions do not explain, address, or otherwise overcome the derogatory information from the landlord indicating that C-F- and her son were the only tenants at the claimed marital residence for many years, including during the period the Petitioner asserted he resided with

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

C-F- at that residence. On appeal, the Petitioner also asserts that the revocation was based on an unlawful investigation, alleging that USCIS requested information about the Petitioner and his abusive spouse's residential history in violation of unspecified confidentiality and privacy provisions regarding the disclosure of information relating to an individual who has filed a VAWA petition. Insofar as the Petitioner is asserting that the confidentiality protections for VAWA filings under section 1367 of Title 8 of the U.S. Code were violated, our review has not identified any such violations. As the Director's decision noted, the record indicates USCIS requested any rental applications and leasing documents from the landlord of claimed marital residence in New Jersey. The record indicates the Petitioner's name or other identifying information were never disclosed to the landlord of the claimed marital residence in New Jersey, and moreover, the information disclosed was not from a prohibited source under 8 U.S.C. § 1367(a)(1). Therefore, the Director did not err by relying on the derogatory information to establish good and sufficient cause for revocation of the VAWA petition.

The Director also noted that the record indicated the Petitioner maintained a separate residence in New York and that this New York residence, rather than the claimed marital residence in New Jersey, was in fact his general place of abode. We acknowledge the Petitioner's explanations that he maintained a separate apartment in New York during the marital relationship for the purpose of running his own business, that he had this residence both before and after his marriage to C-F-, that C-F- had spent several nights at the New York address but that other than himself "no other person has lived there," and that he used the New York address for official documents because he had lived there an extended period of time. However, we note that in his own statement in response to the NOIR, he himself maintained that he "primarily" lived at the New York address from November 2011 to the present, which includes the period in which he claims to have resided with C-F- in New Jersey. Regardless, as stated, even if the New York apartment was not his actual residence during his marriage to C-F-, apart from generally asserting procedural irregularities in USCIS's investigation into the Petitioner's joint residence claim, the Petitioner has not overcome the derogatory information in the record from the investigation indicating that he never resided at the claimed marital residence with C-F- and has not submitted any new evidence establishing his shared residence with C-F-.

Lastly, the record includes other unresolved inconsistencies between the Petitioner's own statements and screenshots of purported text messages between the Petitioner and C-F- that he provided that further undermine his joint residence claim. In his initial statement, the Petitioner stated that he married C-F- in August 2014 and began residing with her and her son earlier that month. However, contrary to the assertion that they lived together since August 2014, the screenshots from January 2015, several months after their marriage, indicate that the Petitioner sent C-F- a text requesting her address and stating he wanted to plan a dinner for them at "my place," to which C-F- responded that she would need to find a babysitter. Similarly, in February 2015, C-F- sent a message stating she wanted to talk with the Petitioner before he met her son for the first time. This conflicts with the Petitioner's initial personal statement where he stated he met the Petitioner's son and purchased him a "PlayStation" in February 2014 several months before he married C-F- and that the three of them had lived together since August 2014. We acknowledge the Petitioner's explanation that he has impaired memory and struggles with dyslexia. However, the inconsistencies described above are not fully resolved by the Petitioner's claimed medical conditions, as they do not explain the 2015 text messages between the couple that reflect they were not residing together at the time as he claimed and that he had not met C-F-'s son until six months after the couple's marriage.

The remaining evidence in the record, including the Petitioner's statement in response to the NOIR, the various affidavits from friends and family regarding his relationship with C-F-, the 2014 tax documents, TD Bank statements, and other documentary evidence, do not address or resolve the material discrepancies and derogatory information discussed. The supporting affidavits also do not indicate that the affiants ever visited the Petitioner and C-F- in their claimed marital home. As the Petitioner has not overcome the derogatory information in the record indicating that the Petitioner did not reside with his U.S. citizen spouse as required under section 204(a)(1)(A)(iii) of the Act, the record establishes good and sufficient cause for the Director's revocation of the approved VAWA petition. Consequently, he has not demonstrated his eligibility for immigrant classification under VAWA and the petition will remain revoked.

ORDER: The appeal is dismissed.