U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29430634

Date: JAN. 8, 2024

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. 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).

A VAWA petitioner must establish, among other requirements, that they entered into the qualifying marriage to the U.S. citizen spouse in good faith and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(ix). Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(i), (vii).

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 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 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, 376 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.,* 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner, a native and citizen of India, filed his VAWA petition in June 2020 based on his marriage to T-J-S-,[1] a U.S. citizen. Before the Director denied the petition, the Director issued a request for evidence (RFE) requesting that the Petitioner establish joint residence, a good faith marriage, and battery and extreme cruelty. After reviewing the response to the RFE, the Director denied the petition, determining that based on the evidence submitted, the Petitioner had not demonstrated that he and T-J-S- resided together, or entered into the marriage in good faith, as required.[2] For example, the bank statements provided showed very few transactions although they were addressed to the Petitioner and his spouse, the letters of support were vague and did not provide many details about the residence or what the writers witnessed with regard to cohabitation. However, the Director afforded some evidentiary weight to certain documents that reflected the same residence for the parties including [redacted] and [redacted] bills, T-J-S's license and correspondence from the Social Security Administration and the Internal Revenue Service. The Director noted that the Petitioner's landlord never met T-J-S- the entire period she and the Petitioner resided together. Thus, although the Petitioner claimed that he resided with his spouse, the landlord, who was twice interviewed by immigration officers, contradicted the Petitioner's assertion. The Director noted that on the VAWA petition, the Petitioner stated that he and T-J-S- resided at the premises July 1, 2017, through October 1, 2019. The Director noted that in January 2021, United States Citizenship and Immigration Services (USCIS) officers talked to the Petitioner's landlord, and he was able to identify pictures of the Petitioner, but he was unable to identify pictures of T-J-S-. He stated that the apartment had been rented to two adult men for at least five years. He also stated that he handled the maintenance for the building and had never observed evidence of any women residing at the residence. In response to this information in the RFE, the Petitioner submitted a letter from the landlord which stated, "I clearly told the officer that there was a woman staying in the apartment with [the Petitioner] when my wife and I visited the apartment to check a power supply issue, but we never saw her face." As a result of the letter from the landlord, he was re-interviewed by USCIS in February 2023 via telephone. The landlord stated that the Petitioner was a person who always paid his rent on time, but he was unaware of any woman residing with him at the residence. He stated that he once saw the back of a person that he believed to be a woman in the residence. He also stated that he signed a letter that someone else drafted on his behalf. The Director concluded that there appeared to be a discrepancy between what the landlord stated and the Petitioner's statements on the VAWA petition because it appeared the

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

[2] The Director did not address whether the Petitioner established battery and/or extreme cruelty.

landlord did not witness the Petitioner reside with any women or see any evidence that a woman resided at the residence with him.

On appeal the Petitioner submits a brief, and an affidavit from the landlord. For himself, he submits the following: affidavit, prescription for Trazodone, October 2019 medical appointment and referral order, and an April 2017 apartment lease form listing him and another man as the tenants. On appeal, the Petitioner asserts that he has established a good faith marriage and joint residence. The Petitioner objects to the use of the results of the USCIS interviews and argues that the Director erred by relying on statements and letter provided by the landlord, and that there is a misinterpretation of the statements and letter. He further argues that the Director failed to acknowledge the corroborating evidence. And that the statements and letter from the landlord cannot be given more weight than all the other documentary evidence including bills, letter from friends, and driving license when the discrepancy referred to is actually a misinterpretation of the landlord's statements due to ambiguity and lack of clarity in the letter and statements to USCIS officers. But we note that the letter was drafted by the Petitioner or someone at his direction, therefore any ambiguity and lack of clarity in the letter is attributable to the Petitioner and is therefore amenable to any interpretation and conclusion. Moreover, 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 claims that he requested a new lease with his spouse's name, but the landlord never responded. The Petitioner further admits that he helped the landlord with the affidavit he provided in support of his petition after he asked him to help prepare it, claiming the landlord took it with him and gave it back to the Petitioner signed. The landlord's affidavit submitted on appeal states that when he visited the apartment to check the power supply, there was a woman there but he never saw her face, he did not recognize the person in the photograph shown to him by USCIS officers in January 2021, and that the letter he submitted in response to the Petitioner's RFE, was drafted under his instructions and guidance and that he told the USCIS officer that it was drafted by someone else and he "was unaware of any woman residing at the apartment."

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 prescinding 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). Even as supplemented on appeal, the Petitioner has not submitted probative, detailed evidence that is sufficient to overcome the Director's grounds for denial of his petition or resolve the discrepancies surrounding his residence with T-J-S-. In his affidavit, the Petitioner asserts that the landlord visited his apartment twice over a seven-year period, took the rent from him, and that he only dealt with the Petitioner. However, in the brief, his attorney proffers that the landlord only visited the residence once. Thus, even on appeal, the record contains inconsistencies. We acknowledge the Petitioner's explanation that the landlord would not have been able to identify T-J-S- in a photograph if he never met her. But we note that the Petitioner relies on the landlord's assertion that when he visited the Petitioner there was a woman "staying in the apartment" but he never saw her face. Consequently, even if the landlord observed such a person, because he admits he did not see her face, he cannot

confirm the person he saw was T-J-S-, or another person. Therefore, the Petitioner's explanation is not reasonable or sufficiently persuasive, particularly as the record indicates that he has lived in the residence for many years.

The Petitioner has not established that he resided with his U.S. citizen spouse, as required. Consequently, he has not demonstrated his eligibility for immigrant classification under VAWA. Because the Petitioner did not establish that he resided with T-J-S-, which is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining eligibility requirements forming the basis of the Director's denial. *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).

ORDER: The appeal is dismissed.