In Re: 35160022 Date: NOV. 21, 2024

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 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 petition, concluding the Petitioner did not establish that she resided with her former spouse. The matter is now before us on appeal pursuant to 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.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification as an immediate relative if the petitioner married the U.S. citizen spouse in good faith, resided with the spouse, was subjected to battery or extreme cruelty by the spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii) of the Act.

When a VAWA self-petitioner's marriage to the abuser has been legally terminated, the self-petitioner may remain eligible for immigrant classification if the self-petitioner demonstrates a connection between the legal termination of the marriage within the past two years and the battery or extreme cruelty of the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Evidence of marital residence may include employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence. 8 C.F.R. § 204.2(c)(2)(iii). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) determines, 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 of the Ivory Coast who married P-B-[1] in Massachusetts on [ ] 2017. The Petitioner and P-B- were divorced in [ ] 2020 and the Petitioner filed her Form I-360 self-petition in November 2020 based on their relationship. On her Form I-360, the Petitioner stated she lived with P-B- from [ ] 2017 to October 2018 at an apartment on [ ] Massachusetts. In her first declaration, the Petitioner stated that "after about a month of living with [P-B-] with his roommates," she relocated to her uncle's home. She recounted that she and P-B- reconciled in September 2018 and "started living as man and wife again at [her] place," but "[a]bout a month after [their] reunion" P-B- "left [her] and never returned." The Petitioner also submitted an affidavit from her uncle who stated that after the Petitioner married P-B- "they moved together to his place," and a bank account statement dated October 2019 jointly addressed to the Petitioner and P-B- at an apartment on [ ] Massachusetts.

In a request for evidence (RFE) the Director stated the relevant evidence submitted with the Form I-360 was inconsistent with the residential history the Petitioner stated on her Form I-485 Application to Register Permanent Residence or Adjust Status, was internally inconsistent, and was insufficient to establish that she resided with P-B-. In response to the RFE, the Petitioner submitted a second declaration in which she stated she moved in with P-B- at his residence on [ ] shortly after their marriage, but they used her uncle's address on [ ] Massachusetts as their mailing address. She explained "after living together for about a month ... I came to the realization that [P-B-] was not ready to move on as we had planned.... So, I moved back to my uncle's house at ... [ ] When I finally moved to .. [ ] he moved in with me until he left ...." The Petitioner explained she listed the period from [ ] 2017 to October 2018 on the Form I-360 because she "thought it referred to when we lived as husband and wife. I did not include the various breaks because I did not know that it meant physical residence together."

The Director determined the Petitioner's response to the RFE and the relevant evidence was insufficient to establish that she resided with P-B-. On appeal, the Petitioner asserts the Director erred because pursuant to USCIS policy, a self-petitioner is not required to reside with the abuser for any specific length of time. The Petitioner is correct that joint residence may occur for any period of time and no specific length of time is required. *See generally* 3 *USCIS Policy Manual* D.2(F) (discussing the residence requirement).

However, the Petitioner bears the burden of proof to establish she resided with P-B- by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner has not met this burden. In her declarations, the Petitioner indicates that she lived with P-B- for approximately one month at his residence on [ ] and for one month at her residence on [ ] The Petitioner does not provide any other information regarding the claimed residence. For example, she does not describe the residences or any shared residential experiences in probative detail. The joint bank statement is dated in 2019 after the Petitioner indicates she and P-B- last resided together

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

in 2018 and is not addressed to either claimed shared residence, but to her uncle's home. In his affidavit, the Petitioner's uncle does not indicate that he ever visited the Petitioner and P-B- at their residence on [ ] does not state that they resided together at the Petitioner's home on [ ] and does not otherwise indicate that he has personal knowledge of the Petitioner's residence with P-B-. The Petitioner's declarations, the joint bank statement, and her uncle's affidavit are insufficient to establish the Petitioner resided with P-B-.

On appeal, the Petitioner further asserts that because the Director usually "consider[s] bona fide marriage and shared residence together[,] [t]here is no reason now to fragment and compartmentalize the two as rigidly discreet requirements ...." The good-faith marriage requirement at section 204(a)(1)(A)(iii)(I)(aa) of the Act is distinct from the joint-residence requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act. While evidence may be relevant to both requirements, each eligibility criterion must be met independently. *See* 8 C.F.R. § 204.2(c)(1)(i)(D) and (H) (implementing the joint-residence and good-faith marriage requirements separately). Although the Petitioner established she entered into marriage with P-B- in good faith, she has not demonstrated that she resided with him, as section 204(a)(1)(A)(iii)(II)(dd) of the Act requires.

III. CONCLUSION

The Petitioner has not established she resided with her former U.S. citizen spouse. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.