U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36882405

Date: FEB. 18, 2025

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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)(VAWA petition), concluding that the Petitioner did not establish she resided with the abusive U.S. citizen spouse or that she married her abusive U.S. citizen spouse in good faith, as required. The matter is now before us on appeal. 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 or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the lawful permanent resident spouse in good faith, and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, a petitioner must establish that they have resided with the abusive spouse. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D). The Act defines a residence as a person's general abode, which means their "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 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).

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).

In this case, the Petitioner married J-Z-[1], a U.S. citizen, in [redacted] 2015. In Part 10 of her VAWA petition, the Petitioner indicated that she lived with J-Z- from February 2015 to July 2017. She also indicated that the last address at which she lived with J-Z was a residence on [redacted] in [redacted] California, from June 8, 2017, to July 30, 2017. In her October 2020 affidavit, the Petitioner detailed that she moved to J-Z-'s residence in [redacted] California after marrying in 2015. She asserts that they moved to [redacted] California in July 2016. In support of their joint residence, the Petitioner submitted a marriage certificate, tax documentation, financial documents, insurance documentation, lease agreements, third-party affidavits, and photographs of the Petitioner and J-Z-.

The Director issued a request for evidence (RFE) in February 2024, stating, among other things, that the evidence did not establish that the Petitioner and J-Z- resided together after they married in [redacted] 2015. The Director sought documentation that the Petitioner resided with her spouse, providing examples of evidence that may establish the couple's shared residence. In response to the RFE, the Petitioner submitted a statement and medical documentation.

The Director denied the petition, finding, in pertinent part, that the Petitioner had not established joint residence with J-Z-. The Director noted that the evidence in the record, including the third-party affidavits, did not suffice to establish that the Petitioner and J-Z- resided together after marriage.[2] On appeal, the Petitioner submits a brief and asserts that she has established eligibility for the benefit sought.

The arguments and evidence submitted by the Petitioner on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to establish that the Petitioner resided with J-Z-. As noted above, "residence" means a person's principal, actual dwelling place, without regard to intent. Section 101(a)(33) of the Act. The preamble to the 1996 interim rule, which confirmed that this definition of residence is binding for VAWA self-petitioners, specifies that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . 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).

Here, the Petitioner has not met her burden of establishing that J-Z-'s principal, actual dwelling place was with her after marriage. Although we acknowledge the Petitioner's statements, they are general in nature, lack specific dates or details, and do not provide any description of the actual residence evidencing the Petitioner's life there with J-Z-, such as details of the residence, home furnishings, daily routines, or any of their belongings.[3] Nor does the declaration from the Petitioner's son provide any details in support of his mother's assertion that she resided with J-Z-. Furthermore, with respect to the third-party affidavits, these statements have limited probative value as they lack any specific dates or details evincing their interactions, if any, with the Petitioner and J-Z- at their residence, to support the Petitioner's contention that she resided with the Petitioner after marriage. Nor does the

[1] We use initials to protect the identities of the individuals in this case.
[2] The Director also determined that the Petitioner did not establish that she entered the marriage with J-Z-in good faith.
[3] We note that the residential lease from May 2017 only references the Petitioner, and is only signed by the Petitioner, even though she purportedly lived with her U.S. citizen spouse until July 2017.

marriage certificate establish that J-Z- resided with the Petitioner after their marriage. With regard to the undated photographs, they purportedly depict the Petitioner and J-Z- together but do not otherwise provide context for or insight into their claimed shared residence.

As for the financial documentation in the record, while some documents indicate joint accounts, they do not establish that the Petitioner and J-Z- resided together. Nor has any explanation been provided by the Petitioner to explain why some household bills from 2016, when the Petitioner purportedly resided with J-Z-, only reference the Petitioner. Regarding the tax documentation submitted by the Petitioner to establish joint residence, the tax returns from 2016 and 2017 list both the Petitioner and J-Z at the same address but are not signed and dated by them under penalties of perjury, as required. Moreover, the 2015 tax return lists both the Petitioner and J-Z- at the same address but is only signed (and not dated) by J-Z-. Most notably, the Form W-2, Wage and Tax Statement (Form W-2) for 2016 for the Petitioner indicates an address in [redacted] California, but J-Z-'s Form W-2 for 2016 indicates an address in [redacted] California, which contradicts the assertions made by the Petitioner on the VAWA petition that she resided with J-Z- from February 2015 to July 2017.

On appeal, the Petitioner has not established, by a preponderance of the evidence, joint residence with F-B- as the Act and regulation require and we lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). *See* section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(D). The Director further determined that the Petitioner had not demonstrated that she married J-Z-in good faith, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. As the Petitioner's inability to establish that she resided with J-Z- is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curium) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

In conclusion, the Petitioner has not established that she resided with her U.S. citizen spouse. Consequently, she has not demonstrated that she is eligible for immigrant classification under VAWA. The petition will therefore remain denied.

ORDER: The appeal is dismissed.