U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27413813

Date: AUG. 10, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), on three separate grounds, concluding that the Petitioner did not establish that: 1) he has a qualifying relationship as the spouse of an LPR and is eligible for immigrant classification; 2) he entered into the marriage with the LPR spouse in good faith; and 3) he resided with the LPR spouse. The matter is now before us on appeal. 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 VAWA petitioner who is the spouse or ex-spouse of a lawful permanent resident (LPR) may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with an LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the Petitioner's spouse. Section 204(a)(1)(B)(ii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as a spouse of an LPR under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

Further, a VAWA self-petitioner does not need to be living with the abusive spouse "when the petition is filed, but [they] must have resided with the abuser in the United States in the past." 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).

U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Outside of the context of section 204(g) and 243(e) of the Act, the burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of the Dominican Republic, last entered the United States in January 2016, and married his LPR spouse, J-H-,[1] in New York in [redacted] 2018. He filed the instant VAWA petition in April 2021 based on a claim of battery and extreme cruelty by J-H-.

A. Joint Residence

On his VAWA petition, the Petitioner indicated that he married J-H- in [redacted] 2019[2] and that they resided together from October 2016 to November 2020, last residing together at their claimed marital residence in [redacted] New York. At the time of filing, the Petitioner did not submit any evidence to demonstrate that he resided with J-H- at any time. In response to the Director's request for evidence (RFE), the Petitioner again did not submit any evidence of joint residence with J-H-. The Petitioner briefly mentioned his residence in the United States in a statement where he generally asserted that he got the opportunity to come to the United States in 2016 and immediately started to look for an apartment to move into together. He provided that he later made the decision to leave the house and only maintain a co-parenting relationship with J-H- in 2019. The Director denied the VAWA petition finding that the Petitioner did not establish that he resided with the LPR spouse and noted the lack of evidence in the record.

On appeal, the Petitioner does not submit any evidence of joint residence with J-H- for a third time. The Petitioner submits a copy of the Certificate of Marriage Registration, which lists different addresses for the Petitioner and J-H-, and briefly indicates that the addresses were different at that time because they were not living together and did not have enough money to start living together. He further indicated that "after things started getting better[, they] decided to move in together and continue [their] journey." The Petitioner also submits a statement on appeal and his only reference to his residence is where he asserts that he "packed [his] things and left her" and "even now that [he has] left the house and [does] not live with her, she still . . . ."

Upon *de novo* review, the record does not include any evidence of joint residence for the Petitioner and J-H-. The brief references to his residence in his statements are not sufficient to meet this

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

[2] Although the Petitioner listed a marriage date of February 3, 2019 on the VAWA petition, we note that the Certificate of Marriage Registration from the City Clerk's Office in [redacted] New York, submitted by the Petitioner, indicates that the marriage took place on [redacted] 2018.

requirement. Despite the multiple opportunities to provide such evidence, on RFE and again on appeal, the Petitioner has not done so. As stated, the burden to establish eligibility under VAWA lies with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375. Here, as discussed, the Petitioner's brief statements and the lack of supporting documentation offers little insight into his joint residence and residential history with J-H-. Again, although the Director specifically identified the lack of evidence, the Petitioner has not provided any evidence establishing his joint residence with J-H- on appeal. As such, the Petitioner has not demonstrated by a preponderance of the evidence that he resided with the LPR spouse, as required.

B. Remaining Grounds for Denial

The Director also determined that the Petitioner has not demonstrated that he has a qualifying relationship as the spouse of an LPR and is eligible for immigrant classification or that he entered into the marriage with J-H- in good faith by clear and convincing evidence, as required by 204(g) and 245(e)(3) of the Act. As our findings that the Petitioner has not established that he resided with J-H- as required is dispositive of his 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) ("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 a Petitioner is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that he resided with the LPR spouse, as required. Consequently, he has not demonstrated that he is eligible for immigrant classification pursuant to VAWA.

ORDER: The appeal is dismissed.