U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27155413

Date: JUN. 27, 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 denied the petition, concluding that the Petitioner did not establish that she resided with her U.S. citizen spouse and that discrepancies between the evidence and her personal statement resulted in a lack of credibility. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner states that the evidence submitted is credible and should be sufficient to establish joint residence.

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 of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates, among other requirements, that they 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). The preamble to the interim rule regarding the self-petitioning provisions of VAWA cited to section 101(a)(33) of the Act as the pertinent definition of "residence" and clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home in the United States 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); *see also Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950) (explaining, in the U.S. Supreme Court decision that was ultimately codified into the definition of "residence" in the Act, that in contrast to

domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode).

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 Petitioner, a citizen and national of India, entered the United States as a student in 2011 and has not departed. In 2019, the Petitioner married R-K-V-[1], a U.S. citizen, and filed the current VAWA petition based on that relationship. As evidence of joint residence before the Director, the Petitioner provided personal statements, correspondence from First Trust Bank indicating that the Petitioner and her spouse opened a joint bank account and listed a shared address, and affidavits from friends and family. The Director denied the petition, determining that the Petitioner and R-K-V- never resided with one another within the definition of "residence" at section 101(a)(33) of the Act and that some of the Petitioner's statements were contradictory, casting doubt on the credibility of the evidence provided. On appeal, the Petitioner asserts that she and her spouse resided with one another for nearly two weeks following their traditional wedding ceremony in [redacted] and for two nights in Kentucky at the home of her spouse's parents. The Petitioner further asserts that there is no set number of days required to establish joint residence and that she is unable to obtain additional documentary evidence due to the abuse by her spouse.

Upon de novo review, the Petitioner has not met her burden of proof in establishing that she resided with her U.S. citizen spouse within the meaning of section 101(a)(33) of the Act. The Petitioner maintains that she and her spouse resided with one another at her apartment in [redacted] for a short time following their customary marriage ceremony in June 2019 and on two separate visits to Kentucky. Based on the Petitioner's statements, R-K-V- and his mother visited the Petitioner in [redacted] for their traditional wedding ceremony but did not consider her apartment to be his place of general abode, returning with his mother to his family home in Kentucky after a short time. The Petitioner further states that she visited the home of her spouse's family on two occasions. On the first occasion, in June 2019, the Petitioner's stated purpose for visiting was to complete the traditional marriage ceremony, returning to [redacted] after one night. On the second occasion, in November 2019, the Petitioner states she traveled to Kentucky to attempt to convince her spouse to attend her immigration interview in [redacted] after months of not speaking to one another. The affidavits provided to support the Petitioner's personal statements each state that the affiants met R-K-V- and the Petitioner in their home and confirm that they made "visits" to Kentucky. We agree with the Director that some of the affiants do not appear to have been completely familiar with the Petitioner's circumstances, however, the discrepancies between the affidavits and the Petitioner's personal statements are not significant enough to warrant a finding of adverse credibility. Regardless, however, we conclude that even though the Petitioner and her spouse may have stayed with one another in the same location during visits to [redacted] and Kentucky, they did not share a place of general abode or principal dwelling place as envisioned by section 101(a)(33) of the Act.

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

While we are sympathetic to the Petitioner's circumstances, she has not established that she resided with her U.S. citizen spouse as defined at section 101(a)(33) of the Act and required under section 204(a)(1)(A)(iii)(II)(dd) of the Act. Consequently, she has not demonstrated her eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.