U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28842716

Date: NOV. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for 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 Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident (VAWA petition), concluding that the Petitioner did not establish that she shared a residence with her U.S. citizen spouse as her principal and actual dwelling. We dismissed a subsequent appeal and a combined motion to reopen and reconsider. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant a motion that satisfy these requirements and demonstrates eligibility for the requested benefit.

In our prior decision to dismiss the appeal, incorporated here by reference, we agreed with the Director's finding that the Petitioner did not establish by a preponderance of the evidence that she shared a residence with her spouse, C-M-P-,[1] or that C-M-P-'s apartment was her principal dwelling. We also noted that the Petitioner conceded that she lived between C-M-P-'s apartment and her aunt's home because of the unclean state of the apartment, lack of space for her and her daughter,[2] and C-M-P-'s abusive treatment. Further, we highlighted that the Director acknowledged the Petitioner's contention that she considered C-M-P-'s apartment her primary residence but reiterated that an intended domicile is distinguished from an actual place of abode, and the Petitioner's actual place of abode was her aunt's residence.

In our subsequent decision to dismiss the Petitioner's combined motion to reopen and reconsider, we noted that the record demonstrated that the Petitioner resided at C-M-P-'s home for three days a week while continuing to maintain a general place of abode for herself and her daughter at her aunt's home. As the Petitioner had not submitted sufficient evidence demonstrating, by a preponderance of the

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

[2] The Petitioner asserted that her daughter only visited C-M-P-'s apartment "every now and then."

evidence, that she did not maintain a general place of abode at her aunt's home, the Petitioner had not established that she resided with her U.S. citizen spouse, as required.

With the instant motion to reconsider, counsel for the Petitioner contends that "the key issue is whether or not Petitioner resided with her husband [C-M-P-] at his apartment at any such time" and the analysis should "focus squarely on whether or not Petitioner spent any such time with her husband and looking at the objective actions she took while living with him to determine whether or not it was her principal dwelling place or place of general above." Thus, counsel maintains that "from the angle" the United States Supreme Court prescribed in *Savorgnan v. United States*, 338 U.S. 491 (1950), "one will conclude that Petitioner in fact resided with her husband and visited her aunt's house—not the other way around."

On motion to reconsider, the Petitioner has not established that our decisions to dismiss the appeal and a subsequent combined motion to reopen and reconsider were based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. As we previously detailed, 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 in fact resided 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).

The Petitioner has not established shared residence with C-M-P- as she has not shown by a preponderance of the evidence that his apartment was her principal dwelling. As we detailed in our decision to dismiss the appeal, the Petitioner conceded she lived between the apartment and her aunt's home and described the apartment as too small for her and her daughter, but she did not provide sufficient evidence that she at any point established the apartment as her primary residence. She detailed the conditions in which she found the apartment and stated generally that she purchased items for the apartment and regularly cleaned it, but otherwise did not describe the apartment or detail her routine there. The Petitioner provided affidavits from herself and her aunt but beyond those statements, which primarily described her spouse's behavior, she did not offer evidence as described above to demonstrate that she and her spouse resided together with his apartment as her primary residence. Further, the Petitioner does not discuss ending living arrangements with her aunt, moving her belongings from her aunt's house to the apartment, or what items she purchased to establish her residence there, nor did she provide any other facts that her principal abode was with her spouse.

With the instant motion, the Petitioner has not established that her U.S. citizen's spouse was the Petitioner's "general abode" or "principal, actual dwelling place." Accordingly, the motion to reconsider is dismissed and the VAWA petition remains denied.

ORDER: The motion to reconsider is dismissed.