U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21819028

Date: JUL. 19, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

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 or Child of U.S. Citizen (VAWA petition), and the matter is before us on appeal. On appeal, the Petitioner submits a brief and asserts his eligibility.[1]

We review the questions in this matter *de novo*. *See 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 if the petitioner demonstrates that they entered into the marriage with a United States citizen 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)(A)(iii) 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 an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

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).

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).

[1] The Petitioner originally submitted a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with the instant appeal. However, we later received a request to withdraw as counsel from the attorney listed on this Form G-28. We therefore consider the Petitioner to be self-represented in the instant proceedings.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In September 2019, the Petitioner, a native and citizen of the Bahamas, filed this VAWA petition based upon his [redacted] 2017 marriage to his U.S. citizen spouse, R-L-H-.[2] In November 2021, upon review of evidence submitted both with the VAWA petition and in response to requests for evidence (RFE) and a notice of intent to deny (NOID), the Director denied this petition, concluding that the Petitioner had not established that he resided with R-L-H- and that he entered into the marriage with R-L-H- in good faith, as required.

On appeal, the Petitioner offers a supplemental statement and asserts that the evidence in the record below establishes by a preponderance of the evidence that he resided with R-L-H- and his good faith marital intentions. Upon *de novo* review of the record as supplemented on appeal, the Petitioner has not established his joint residence with R-L-H-.

The Petitioner attested on his VAWA petition that he resided with R-L-H- [redacted] 2017 to August 2019, and that their last shared residence was in [redacted] AL. However, his statements in the record are insufficient to establish this by a preponderance of the evidence as they lack probative details and as the statements he submitted with his initial petition and in his RFE statement are inconsistent with assertions made in his NOID statement. In both his initial and RFE statements before the Director, the Petitioner explained that he lived with R-L-H- in North [redacted] FL, but did not offer a detailed or clear timeline of this joint residence and the couple's shared residential history there. For example, in his initial statement, the Petitioner indicated that he and his spouse agreed to get married and to move in together, but he did not state when they moved in together; the statement was similarly unclear as to when the Petitioner and R-L-H- no longer lived together at the North [redacted] residence, only indicating that he returned to this residence in July 2017 to find that it was vacant.

In his NOID statement, the Petitioner clarified that he moved in with R-L-H- in [redacted] 2017 to her apartment in North [redacted] FL but that after a brief, work-related absence, he returned to this residence in July 2017 to find that R-L-H- had vacated the property. The Petitioner also explained that R-L-H- moved to Alabama in July 2017 to reside with her grandparents in [redacted] AL. He stated that from July 2017 through November 2017, he continued to be based in Florida for his job and that during that period, he lived with his cousin in [redacted] Springs, FL, and then rented an apartment in [redacted] FL. In this statement, he does not assert that his spouse shared any residences with him in Florida after she moved to Alabama. Instead, his NOID statement indicated he was bicoastal from October 2017 through August 2019 and visited her in Alabama around his work schedule and his visitation schedule for his son from a prior marriage who resided in Florida at the time. He indicated that he shared a guest bedroom with his son and R-L-H- whenever they visited R-L-H- at her grandparents' home. He did not provide any probative details about their shared life and routines at the [redacted] AL residence, instead generally relaying that he and R-L-H- began to work on their relationship and that they next moved into an apartment in [redacted] AL. Accordingly, apart from

[2] Initials are used to protect the privacy of this individual.

providing this general timeline of the couple's claimed shared residential history, the Petitioner's statements did not provide probative details discussing their residential routines at the residences in Alabama.

The statements made by the Petitioner in his initial statement regarding when he began residing with R-L-H- also are inconsistent with those made in his NOID statement. The Petitioner initially stated that after discussion, he and R-L-H- decided they would wait until they were married to move in together. In his NOID statement, however, he recounted that he moved in with R-L-H- in [redacted] 2017, a month prior to their [redacted] 2017 wedding. The marriage certificate in the record also reflects a shared address in North [redacted] at the time. This is inconsistent with his assertion that they did not reside together until after their wedding, lessening the evidentiary weight of his statements. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (providing that USCIS will consider any credible evidence, but that the weight that USCIS gives this evidence lies within USCIS' sole discretion.)

The Petitioner's remaining evidence before the Director does not overcome the deficiencies referenced in his statements. The third-party supporting affidavits in the record below lack probative statements regarding the couple's claimed shared residences either in Florida or in Alabama, instead discussing generally the Petitioner's character and his relationship with R-L-H-. With regard to his claim of joint residence with R-L-H- in North [redacted], FL, relevant evidence in the record below included his Florida driver's license issued in June 2017. The record also contained Bank of America statements listing both the Petitioner and R-L-H- as account holders at the North [redacted] address but included images of checks for the account bearing only the Petitioner's name and signature. Although these documents provide some support for the Petitioner's assertion that he lived at that address, they are insufficient to establish his joint residence with R-L-H- there, given the lack of probative statements from the Petitioner and the inconsistencies described above. The record also included a Florida Department of Motor Vehicles and a tax document bearing the North [redacted] address but they are only in the Petitioner's name. Likewise, toll enforcement notices sent to the North [redacted] address are in R-L-H-'s name only. Other evidence addressed to the Petitioner at the North [redacted] address, including a July 2017 federal tax withholding form, an August 2017 Wells Fargo bank statement, a September 2017 Ally Bank document, a November 2017 Discover Benefits statement, and a February 2018 cellular phone bill, as well as his pilot's license, issued in May 2018, were dated during times he claimed the couple was no longer residing at that North [redacted] address and R-L-H- had moved to Alabama. The Petitioner also submitted documents related to a joint car insurance policy effective from September 2017 through March 2018 and from March 2018 through September 2018, and a July 2019 notice of cancellation for this policy. However this documentation was addressed to his residence in [redacted] Springs, FL address where he resided for a time without R-L-H- and was dated after R-L-H- had already moved to Alabama. The Petitioner also provided a lease dated September 2019; however, it is dated after he had separated from his spouse and is in the Petitioner's name only for a residence in Florida where he never resided with his spouse.

As it relates to the Petitioner's claimed shared residences with R-L-H- in Alabama, beginning in July 2017, the record below contained a photograph of R-L-H- with a hand-written label indicating it was taken at the [redacted] AL address, and two additional undated photographs of R-L-H-'s son, R-L-H-, and the Petitioner, with handwritten labels indicating that they were taken in February 2019 in [redacted] AL. However, in the absence of credible, substantive testimony from the Petitioner or third-party affiants discussing the Petitioner's joint residence in AL or other probative documentation, these

photographs are insufficient, by a preponderance of the evidence, to establish that the Petitioner shared a residence with his spouse in Alabama.

On appeal, the Petitioner provides a brief asserting that the Director's decision did not consider the totality of the credible evidence in the record before the Director in determining that he had not established his joint residence. Upon review, we do not find this argument persuasive. The Director addressed each piece of evidence in the record thoroughly, identifying discrepancies between the Petitioner's statements in the record below and this evidence where relevant, as well as explaining other deficiencies in the evidence as it related to establishing joint residence. In determining that the Petitioner had not established his joint residence with R-L-H-, the Director's decision acknowledged this evidence, but concluded that, due to the identified inconsistencies in the Petitioner's statements, USCIS was unable to determine his joint residence with R-L-H-. *See* Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (stating that USCIS considers any credible evidence relevant to the VAWA petition but has sole discretion in determining the weight to be given and the credibility of such evidence).

On appeal the Petitioner offers no additional evidence to resolve the identified inconsistencies or otherwise overcome the grounds for the Director's denial. As we discussed above, his personal statements lacked probative descriptions of his joint residences beyond a general timeline and introduced inconsistencies into the record that lessened the evidentiary weight afforded these statements. Further, the remaining documentary evidence in the record below did not overcome these deficiencies in the Petitioner's statements with respect to his claim that he shared a residence with R-L-H- in Florida or in Alabama. It is the Petitioner's burden to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369 at 375. Absent explanations for the inconsistencies, probative descriptions of these residences and his daily routine with R-L-H- at these residences, or other evidence sufficient to establish the Petitioner's joint residence with R-L-H- from January 2017 to August 2019, the Petitioner has not met this burden. He therefore has not demonstrated, by a preponderance of the evidence, that he resided with his abusive U.S. citizen spouse, R-L-H- as required.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his good faith marital intentions. *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 an applicant is otherwise ineligible).

III. CONCLUSION

On appeal, the Petitioner has not demonstrated that he resided with his U.S. citizen spouse. He therefore has not established his eligibility for VAWA immigrant classification.

ORDER: The appeal is dismissed.