



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF K-H-S-

DATE: JUNE 22, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

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, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director determined the Petitioner did not sufficiently establish that she resided with her U.S. citizen spouse. We summarily dismissed the Petitioner's appeal, concluding that the Petitioner did not identify any specific, erroneous conclusion of law or statement of fact in the Director's decision. Subsequent to that decision, the Petitioner provided a copy of correspondence, which was not previously available to us for consideration, confirming the delivery of additional materials that she submitted in support of her appeal.

Upon review, we will reopen the matter *sua sponte* and dismiss the appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that a petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the petitioner or a child of that individual was battered or subjected to extreme cruelty perpetrated by the U.S. citizen spouse. In addition, the petitioner must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The eligibility requirements for an abused spouse are explained at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (v) *Residence* The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

The evidentiary standard and guidelines for a VAWA petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together 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 may be submitted.

Section 101(a)(33) of the Act prescribes “[t]he term ‘residence’ means the place of general abode; the place of general abode of a person means his 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 VAWA provisions cited section 101(a)(33) of the Act as the binding definition of residence and further clarified “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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Director concluded that the Petitioner did not establish her residence with her U.S. citizen spouse, J-F-¹ during their marriage. Specifically, the Director found that J-F- was incarcerated prior to their marriage in 2007 and that upon his release in 2012, the Petitioner and J-F- did not establish a residence together.

On appeal, the Petitioner asserts the regulation at 8 C.F.R. § 204.2(c)(1) does not specify the length of time that she must have resided with her U.S. citizen spouse, nor do the regulations require them to own the property where they resided. The Petitioner also asserts the denial of her VAWA petition “conveys the message . . . that because she did not suffer the abuse long enough under the same roof, or that because the bed in which they slept together was not under their own roof, that her abuse was not real and she is not worthy of protection under VAWA.” Although the Petitioner correctly identifies that the regulations do not indicate a specific timeframe for establishing her joint residence with J-F- or require that they own their residence, as indicated previously, she bears the burden of

¹ Name withheld to protect the individual’s identity.

proof in these matters to establish by a preponderance of the evidence that she in fact has resided with her spouse.

In a notice of intent to deny (NOID), the Director summarized the Petitioner's statements and a prison visitation log, concluding that while the evidence demonstrated not only that the Petitioner visited J-F- during his incarceration and upon his release, but also that she rented a hotel room "to share a private evening[,]" the record lacked sufficient evidence of them having resided together. The NOID listed the types of evidence outlined in the regulation, including the submission of affidavits, joint leases, and rental agreements, but did not require the Petitioner to submit any specific document demonstrating ownership of her residence. In her response to the NOID, the Petitioner stated she "had every intention of . . . living together [with J-F-] throughout [their] relationship and [she] did everything . . . to make this happen[,]" including having signed a lease for an apartment which they would renew upon his discharge from prison the following year. The Director's decision to deny the VAWA petition contained similar and further discussions about the Petitioner's supplemental statement, acknowledging clarification of dates and her explanation that J-F- stayed with her at a friend's apartment while his primary residence was at a halfway house, and concluded that there was insufficient evidence of the Petitioner having resided with her spouse. The record does not support a finding that the Director inappropriately required the Petitioner to provide evidence of ownership of her residence or remain in an abusive relationship for a specified period of time to qualify for immigrant classification as the abused spouse of a U.S. citizen.

On appeal, the Petitioner explains that while they awaited J-F-'s parole officer's approval of their residence, she lived at a friend's apartment, where she and J-F- ate, slept, and spent time with friends despite him having "to check in at his half-way [*sic*] house" Although the Petitioner submitted some email correspondence demonstrating the Petitioner's attempts in March 2010 to obtain an apartment in anticipation of J-F-'s release from prison, the record indicates that J-F- continued to maintain his own principal dwelling place at the prison and the halfway house, apart from the Petitioner during their six year marriage, and that he came to visit and spend time with her at a friend's apartment. Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with J-F- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

III. CONCLUSION

Although the Petitioner has submitted evidence to support the reopening of this matter *sua sponte*, she has not overcome the grounds for denial of the petition. The Petitioner bears the burden of proof to establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of K-H-S-*, ID# 16519 (AAO June 22, 2016)