U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26739773

Date: MAY 10, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen)

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 VAWA petition, concluding that the record did not establish that the Petitioner has a qualifying relationship with a U.S. citizen. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a statement of appeal and additional evidence. 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 that they entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the petitioner or their child was battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1). In addition, a petitioner 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). Specifically, a petitioner must submit evidence of the marital relationship in the form of a marriage certificate and proof of the termination of all prior marriages for the petitioner and the abuser. 8 C.F.R. §§ 204.2(b)(2), (c)(2)(ii). Further, a petitioner's remarriage precludes the approval of a VAWA self-petition. 8 CFR § 204.2(c)(1)(ii). 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). 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).

In this case, the Petitioner, a citizen of Peru, indicated on her VAWA petition that she had been married two times and that her U.S. citizen abuser, A-B-,[1] had been married zero times. In support of her VAWA petition, the Petitioner submitted, in pertinent part, a copy of her Final Judgement of Divorce

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

from her first spouse, A-Z-, in [redacted]2014, and her marriage certificate for her marriage to a third person, A-O-, in [redacted]2019. The Petitioner then filed the instant VAWA petition in September 2019 based on her relationship with A-B-.

In response to the Director's request for evidence (RFE), the Petitioner submitted a statement and clearly stated that she and her abuser, A-B-, "never got married, [but] were living together" and had two children (twins) together in [redacted]2013. The Director denied the VAWA petition, concluding that the Petitioner never married her abuser, A-B-, and therefore she could not demonstrate a qualifying spousal relationship with an abusive U.S. citizen. The Director further concluded that even if she had established a legal marriage to A-B-, she did not establish a qualifying relationship based on that marriage for purposes of VAWA eligibility because she later remarried. The Director therefore found that the Petitioner was also unable to demonstrate eligibility as an immediate relative as defined under section 201(b)(2)(A)(i) of the Act as the spouse of a U.S. citizen.

On appeal, the Petitioner submits a statement of appeal, asserting that she disagrees with the Director's decision, as well as letters from three friends who knew her in her relationship with A-B- and IRS tax forms for 2013 to 2016. The Petitioner has not overcome on appeal the Director's grounds for denial of her VAWA petition.

First, the Petitioner has not established that she has a qualifying spousal relationship with an abusive U.S. citizen as required. Section 204(a)(1)(A)(iii)(II)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(i). The Petitioner concedes in her statement, submitted in response to the Director's RFE, that she and A-B- were never lawfully married. The Petitioner does not specifically address the Director's conclusions in denying the VAWA petition, which are supported in the record. Accordingly, the Petitioner has not established the requisite qualifying spousal relationship with A-B- and is ineligible as the self-petitioning spouse of a U.S. citizen, on this basis alone.

Furthermore, even if the record established the Petitioner's marriage to A-B- to serve as the basis for this VAWA petition (and its subsequent termination), her subsequent marriage to A-O- prior to filing the VAWA petition mandates the application of 8 C.F.R. § 204.2(c)(1)(ii), which precludes approval of a pending petition upon a petitioner's remarriage. In subsequent amendments to the original VAWA statutory provisions at section 204 of the Act, Congress left alone USCIS' interpretation that remarriage prior to petition approval requires denial.[2] The legislative history supports the Director's determination that remarriage at any point prior to filing or while the VAWA petition is pending negates the need for VAWA protection. *See Delmas v. Gonzalez*, 422 F. Supp. 2d 1299, 1302-03 (S.D. Fla. 2005) (remarriage prior to filing VAWA self-petition was disqualifying). Congress specifically declined to extend eligibility to VAWA petitioners who divorce their abusers and remarry someone else prior to the approval of their self-petitions. Thus, even if the Petitioner established that she had legally married A-B-, she has not demonstrated a qualifying relationship as the spouse of a U.S. citizen based on that marriage, since she later remarried prior to filing this petition.

[2] *See* Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386 (Oct. 28, 2000), Division B, Violence Against Women Act of 2000 (VAWA 2000), Title V, Battered Immigrant Women.; Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 (Jan. 5, 2005) (VAWA 2005); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (Mar. 7, 2013) (VAWA 2013).

Accordingly, the Petitioner has not established the requisite spousal relationship to a U.S. citizen and therefore necessarily is not eligible for immigrant classification based upon that relationship.

ORDER: The appeal is dismissed.