U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31912269

Date: APR. 17, 2024

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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish a qualifying marital relationship and her corresponding eligibility for immigrant classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and copies of previously submitted evidence.

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 VAWA petitioner who is the spouse or ex-spouse of a United States 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)(I) 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). Specifically, a petitioner must submit evidence of the 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).

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). 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).

In this case, the Petitioner, a citizen of Colombia, indicated on her VAWA petition that she and her abuser, L-A-,[1] had both been married only once. In support of her VAWA petition, the Petitioner submitted, in pertinent part, a copy of her marriage certificate to L-A-.

In denying the petition, the Director determined that the record does not contain satisfactory evidence to demonstrate that the Petitioner has a qualifying relationship with a U.S. citizen or that she is eligible for immigrant classification under section 201(b)(2)(A)(i). The Director noted that the Petitioner submitted medical records from [redacted] indicating that at an interview in December 2017, the Nurse annotated that the Petitioner "lives with 3 children: 10, 18, 21 y/o. Feeling depressed because she was separated from husband for one year and one year later remarried to Puerto Rican man. He offers to get green card." The Director determined that these medical records infer that the Petitioner has been married more than once. Critically however, the Director also noted that at a previous nonimmigrant visa interview in January 2006, the Petitioner stated that she was married to F-J-V-H- at that time. The Director concluded that both instances weigh against the Petitioner's claim that her marriage to L-A- is her first marriage. The Director then noted that, in response to a request for evidence (RFE), the Petitioner's Counsel filed a response stating that the Petitioner has only been married once. However, the Director determined, and we agree, that the statements made in Counsel's response to the RFE cannot be relied upon as evidence because the document is simply a proffer and not evidence. The Petitioner did not submit a statement or affidavit addressing any prior marriages or other relationships.

On appeal, the Petitioner submits a brief from Counsel stating that the Petitioner was never married to M-M-V-B-, the father of her three children, or F-J-V-H-, the man indicated at her nonimmigrant visa interview. Counsel indicates that the Petitioner unknowingly misrepresented herself at the nonimmigrant visa interview because she was in a "common-law marriage" with F-J-V-H- in Colombia from 2002-2006 but they "were never officially married under the law or the church." Counsel also indicates that the Petitioner was abandoned by M-M-V-B-, the father of her three children, who she saw as a husband because they were living in a common-law marriage in the United States, which is why she commented to the Nurse about said abandonment. However, Counsel states that the Petitioner was never officially married to M-M-V-B- either. As an initial matter, Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. On appeal, the Petitioner does not submit any new evidence, such as her own statement or affidavit. The Petitioner has not addressed her marital history in the record herself or indicated she is unable to do so.

Upon de novo review, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight

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

circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the Petitioner has not provided any evidence to overcome the Director's decision on appeal. While the Petitioner's Counsel contends that the Petitioner was never married prior to L-A-, she does not submit any evidence to rebut the evidence in the record of her own claims to having a prior marriage. Therefore, we cannot conclude that the Petitioner has met her burden of establishing a qualifying marital relationship with a U.S. citizen for purposes of immigrant classification under section 204(a)(1)(A)(iii) of the Act. Because the Petitioner has not demonstrated a qualifying marital relationship, she also has not established that she is eligible for immediate relative classification based on such a relationship.[2] The petition will therefore remain denied.

ORDER: The appeal is dismissed.

[2] Since the identified basis for denial is dispositive of the Petitioner's appeal, we do not address whether the Petitioner has established eligibility under the remaining VAWA criteria at section 204(a)(1)(A)(iii) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).