U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17249530

Date: JUN. 01, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the 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).

Even if a petitioner is otherwise eligible for VAWA classification, however, a VAWA petition may not be approved if the petitioner previously received, or sought to receive, immediate relative status as the spouse of a U.S. citizen by attempting, conspiring, or entering into a marriage for the purpose of evading the immigration laws. Section 204(c) of the Act. The Director will deny an immigrant visa petition where there is "substantial and probative" evidence of an attempt or conspiracy to enter into a marriage for the purpose of evading immigration laws. 8 C.F.R. § 204.2(a)(1)(ii). A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978).

Petitioners bear the burden of proof 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

The record reflects that the Petitioner, a native and citizen of Argentina, entered the United States multiple times as a tourist and last entered in 2005 via parole. In 2004 she married her first spouse, T-E-A-,[1] a U.S. citizen who filed a Form I-130, Petition for Alien Relative (relative petition), on her behalf but subsequently withdrew the petition in 2005. The couple divorced in 2006.[2] In 2009, the Petitioner married A-I-G-, a U.S. citizen who in 2013 filed a relative petition for her that was denied in 2014 with a subsequent appeal dismissed by the Board of Immigration Appeals in 2016. The Petitioner filed her VAWA petition in June 2018 claiming abuse from A-I-G-, with whom she indicates that she resided from September 2008 until May 2018.

The Director denied the VAWA petition, finding that the Petitioner was not eligible for immigrant classification under section 201(b)(2)(A)(I) of the Act. The Director determined that the Petitioner was barred under section 204(c) of the Act because she entered into a previous marriage for the sole purpose of obtaining immigration benefits. The Director noted that the Petitioner's first spouse filed a relative petition on her behalf but then withdrew the petition, attesting in a sworn statement before an immigration officer that he had not resided with the Petitioner and was paid for the marriage. The Director indicated that in 2013 the Petitioner's current spouse filed a relative petition that was denied based on a finding that the prior marriage had been entered solely to obtain immigration benefits, and that in 2016 the Board of Immigration Appeals dismissed the Petitioner's appeal, determining that as there was substantial and probative evidence of marriage fraud the Director had correctly concluded the visa petition could not be approved. The Director acknowledged that with the VAWA petition the Petitioner submitted a statement from her former spouse but determined it of less evidentiary weight than his previous sworn statement and did not overcome the finding of marriage fraud.[3]

On appeal, the Petitioner argues, through counsel, that she has established the requirements for VAWA and that the only issue is whether she has established that she is eligible for immigrant classification. She contends that section 201(b)(2)(A)(i) of the Act refers to immediate relatives as children, spouses, and parents of a U.S. citizen, that it does not state that marriage fraud from a prior marriage prevents an alien relative from establishing that she is an immediate relative in a second marriage, and that she, the Petitioner, has shown her current marriage is in good faith. The Petitioner maintains that the Director does not point to any evidence establishing that the definition of immediate relative in the Act is nullified by a finding of marriage fraud in a prior marriage and that there is no legal basis for finding she cannot be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act based on her current good faith marriage.

The Petitioner does not contest the finding that her prior marriage was entered into solely to obtain an immigration benefit, but rather argues that it does not preclude approval of her VAWA petition. However, section 204(c) of the Act provides that no petition shall be approved if the individual has previously been accorded, or has sought to be accorded, an immediate relative or preference status as

[1] We use initials to protect individual identities.
[2] The record indicates that in 2006 the Petitioner married another individual from whom she divorced in 2009.
[3] In an undated statement the former spouse claimed he is a lifelong alcoholic and became nervous during the couple's immigration interview and signed a paper that the marriage was not real for fear of otherwise being jailed. Similar claims made in prior statements were addressed in the Director's 2014 decision and the 2016 decision by the Board of Immigration Appeals.

the spouse of a citizen of the United States by reason of a marriage determined to have been entered into for the purpose of evading the immigration laws. Rather, a finding of marriage fraud under section 204(c) of the Act prohibits approval of any subsequent visa petition, whether family- or employment-based, filed on behalf of an individual who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, irrespective of the validity of a current marriage.

The Petitioner has not overcome the determination that section 204(c) of Act applies and therefore prohibits approval of her VAWA petition based on her subsequent marriage.

ORDER: The appeal is dismissed.