U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20487835

Date: JUN. 02, 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 Petitioner's subsequent motion to reopen and reconsider. The matter is before us on appeal. Upon *de novo* review, we will remand the matter to the Director.

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 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).

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).

II. ANALYSIS

The Petitioner is a native and citizen of Tajikistan who entered the United States with a J-1 nonimmigrant visa in 2010, married her U.S. citizen spouse, E-K-,[1] in [redacted] 2016, and filed her VAWA petition in August 2018. The Director issued a request for evidence (RFE) because the Form I-360 indicated the Petitioner had been married two times and required proof of the legal termination of her prior marriage. In response the Petitioner provided an affidavit claiming she was never married before and that she and the father of her son, born in 2015, had a Muslim religious ceremony with an Iman but did not have a civil ceremony or register the marriage. She contended that an unregistered

[1] We use initials to protect individual identities.

religious marriage is not recognized under New York law. and she could not get a divorce degree because there was no marriage.

The Director denied the petition, finding that the Petitioner did not establish a qualifying relationship with a citizen of the United States and that she was eligible for immigrant classification. In denying the petition the Director noted that on Form I-360 the Petitioner indicated she had been married two times but then did not provide sufficient evidence demonstrating that all previous marriages were legally terminated prior to her instant marriage. The Director acknowledged the Petitioner's statement in response to the RFE but cited Section 25 of New York Domestic Relations Law that recognizes a marriage celebrated in a religious ceremony as valid even if the parties do not obtain a required marriage license.[2] The Director concluded that since the record did not contain satisfactory evidence demonstrating that all previous marriages were legally terminated, the required qualifying relationship did not exist, and the Petitioner was not eligible for immigrant classification.

On a motion to reopen and reconsider, the Petitioner submitted an amended Form I-360 indicating one marriage and alleged, through counsel, that listing two marriages on the Form I-360 was a typographical error and pointed out that her Form I-485, Application to Adjust Status listed one marriage.[3] The Petitioner argued that the Director erroneously relied on Section 25 of the New York Domestic Relations Law and that she never intended to hold herself out as married nor did she legally or civilly marry. The Director denied the motion determining that the Petitioner did not submit new evidence to overcome the prior decision as she did not provide attainable evidence that the marriage did not take place, such as a search of a marriage registry or records from courts or clerks' offices. The Director concluded that the Petitioner did not provide evidence that the marriage did not take place, that a corrected Form I-360 was insufficient to overcome her original claim of two marriages, and that she did not provide new facts or a compelling reason for reconsideration.

On appeal, the Petitioner argues, through counsel, that cumulative evidence shows she was free to marry E-K-, that the Director credited a mistaken notation on her Form I-360 over a correct notation on her Form I-485, disregarded her sworn statement, and held her to a higher standard of proof than required. She contends that the Director requested she prove a negative and that no proof of termination is available because the marriage never took place. The Petitioner contends that New York state law requires a marriage ceremony within the [redacted] be registered with the city clerk and maintains that she requested a records search where no record of marriage was found. With the appeal the Petitioner submits results of her marriage records request with the [redacted] Office of the City Clerk.

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[2] Section 25 of the Domestic Relations Law provides: License, when to be obtained. The provisions of this article pertaining to the granting of the licenses before a marriage can be lawfully celebrated apply to all persons who assume the marriage relation in accordance with subdivision four of section eleven of this chapter. Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age. N.Y. Dom. Rel. Law § 25 (McKinney 2021)

[3] We note that the Petitioner did not list a prior marriage on a Form I-485 submitted in conjunction with her VAWA petition or with a Form I-130, Petition for Alien Relative filed on her behalf by E-K-, or on a Form G-325, Biographic Information. Further, her son's birth certificate does not list the father's name. However, a psychological evaluation dated June 2018 referred to the Petitioner's "first marriage" falling apart and being separated from her second husband, E-K-, and a psychiatric report, also dated June 2018, referred to her as "twice divorced."

Because the Petitioner submits evidence on appeal that directly addresses the Director's reasons for denying the petition, we find it appropriate to remand the matter to the Director to consider the evidence in the first instance to determine whether the Petitioner has established she was free to marry her U.S. citizen spouse, E-K-, and, if so, whether she has met other requirements to establish her eligibility for immigrant classification as the abused spouse of a U.S. citizen.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.