U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19884821

Date: JUN. 8, 2022

Motion on Administrative Appeals Office 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 at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). We dismissed the Applicant's appeal and the matter is now before us on a motion to reconsider. On motion, the Applicant submits additional evidence and asserts the record demonstrates her eligibility for the benefit sought. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. PROCEDURAL HISTORY AND ANALYSIS

The Petitioner, a citizen of Mexico, married C-H-,[1] a U.S. citizen in 2007. She filed a VAWA petition, which was approved in 2009. She then filed a subsequent Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied in 2012. In [redacted], 2013, the marriage between the Petitioner and C-H- was terminated. The Petitioner filed the instant VAWA petition in May 2018, based on her prior marriage to C-H-. In denying the petition, the Director determined that because the marriage ended in 2013, the Petitioner did not have a qualifying relationship with her former spouse within two years of filing the VAWA petition as required under section 204(a)(1) of the Act. The Director further found that because the Petitioner did not have a qualifying relationship,

[1] We use initials to protect the identities of the individuals in this case.

she was unable to demonstrate eligibility for immigrant classification under section 201(b)(2)(A) of the Act.[2]

In our prior decision, incorporated here by reference, we explained that the language of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act requires that to remain eligible for immigrant classification despite the termination of a marriage to a U.S. citizen spouse, a petitioner must have been the *bona fide* spouse of a U.S. citizen "within the past 2 years." In the present matter, the Petitioner's divorce occurred more than two years before she filed the instant VAWA petition. Accordingly, she cannot establish a qualifying relationship with her U.S. citizen spouse and her eligibility for immediate relative classification based on that relationship.

On motion, the Petitioner reiterates her assertions on appeal that her initial VAWA petition was approved in 2009 because she was a victim of severe emotional and physical abuse, she suffered abuse from her former spouse and during other relationships, and she is seeking residency in the United States to continue to work and study. The Petitioner states that she would like to clarify that her marriage to C-H- was in good faith and they have been caring for each other from 2007 to 2021. On motion, the Petitioner provides a letter from C-H- describing their relationship during and after their marriage, insurance coverage information, an internet bill, a partial bank account statement, and copies of previously submitted evidence.

Upon review, the Petitioner has still not demonstrated that she had a qualifying relationship with her former spouse within two years of filing the VAWA petition as required under section 204(a)(1) of the Act. As noted in our previous decision, the Act does not contain any exception under which a petitioner may file a VAWA self-petition after the two-year period following the termination of marriage. In enacting section 204(a)(1)(A)(iii)(II) of the Act, Congress did not authorize USCIS to exercise discretion when applying the two-year statutory deadline at issue here, and we may not change the terms of the statutory eligibility requirements. *See Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1142-45 (11th Cir. 2009) (explaining that unless a statute authorizes the Secretary of the Department of Homeland Security to exercise his discretion, the Secretary's determination of eligibility is not discretionary).

The Petitioner does not cite any pertinent precedent decisions to demonstrate that we misapplied the law or USCIS policy. In addition, the Petitioner has not established that our prior decision was incorrect based on the evidence in the record at the time of the initial decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider, as specified in 8 C.F.R. § 103.5(a)(3). Accordingly, the petition remains denied.

ORDER: The motion to reconsider is dismissed.

[2] The Director also determined that the record did not demonstrate the Petitioner jointly resided with her former spouse, entered into marriage in good faith, was subjected to battery or extreme cruelty, or was a person of good moral character.