U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18347267

Date: JUN. 13, 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 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), as an abused spouse of a U.S. citizen. The Director of the Vermont Service Center (VSC) denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). The Petitioner filed a motion to reopen his VAWA petition with the VSC. The Director dismissed the motion to reopen. The matter is now before us on appeal. On appeal, the Petitioner submits a letter asserting his eligibility. The Administrative Appeals Office reviews 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 or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with the U.S. citizen spouse in good faith, and 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. Among other things, a petitioner must establish that their current or prior marriage to a U.S. citizen was "within the past 2 years," and that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. Section 204(a)(1)(A)(iii)(II) of the Act. 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).

The Petitioner, a native and citizen of Israel, was admitted to the United States in B-2 nonimmigrant visitor status in May 2014, and married E-R-,[1] a U.S. citizen, in [redacted] 2016. The Petitioner divorced E-R- on [redacted] 2016. U.S. Citizenship and Immigration Services (USCIS) received his VAWA petition on September 4, 2018, over two years after the Petitioner divorced E-R-. In a letter from his counsel that accompanied the VAWA petition, the Petitioner acknowledged that his VAWA petition was sent to USCIS exactly two years after his divorce and stated that it was necessary to do so because his counsel was hired on [redacted] 2016. The Director denied the VAWA petition, concluding that the Petitioner had not demonstrated that he has a qualifying relationship as a former spouse of a U.S. citizen because he did not file his VAWA petition within two years of his divorce.

[1] Initials are used throughout this decision to protect the identity of the individual.

The Petitioner filed motions to reopen and reconsider with the Director along with an affidavit from his attorney and other documentation. The Petitioner argued that his late filing was due to an error by the office of his counsel. In an affidavit, counsel for the Petitioner stated that the paralegal working on the case had surgery in August of 2018, which delayed counsel's ability to gather the documents submitted with the Petitioner's VAWA petition. Petitioner's counsel went on to state that the Petitioner hired counsel on August 4, 2018.[2] The affidavit described the Petitioner sending his VAWA petition documents to counsel on August 27, 2018, and counsel mailing the VAWA petition when he received the documents, on [redacted] 2018: exactly two years after the Petitioner divorced E-R-. The Director found that the Petitioner did not present any new facts to overcome the grounds for denial and denied the motion to reopen. She underscored inconsistencies in the two letters sent by his attorney regarding the late filing and held that the late filing of the VAWA petition was not beyond the Petitioner or his counsel's control.

On appeal, the Petitioner, who is now unrepresented, argues that the Director focused on whether he had a qualifying relationship to a U.S. citizen and disregarded the other evidence supporting his eligibility for VAWA. The Petitioner repeats his arguments from his VAWA petition and subsequent motions to the Director, indicating that he tried to gather all of the necessary documents and get them to prior counsel as soon as possible. He also argues that the filing date should be on the day he mailed his VAWA petition, and his filing was timely because he mailed the VAWA petition exactly two years after he divorced E-R-.

We adopt and affirm the Director's decisions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision."). The language of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act states 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." Further, contrary to the Petitioner's assertions, the filing date is the day USCIS receives the filing, not the day it is mailed. 8 C.F.R. § 103.2(a)(7)(i).[3] Since the Petitioner filed his VAWA petition on September 4, 2018, and was divorced on [redacted] 2016, the VAWA petition was not filed within two years of his divorce of E-R-. The Act does not contain any exception under which a petitioner may file a VAWA petition after the two-year period following the termination of marriage. We may not change the terms of the statutory eligibility requirements and lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials); *Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1142-45 (11th Cir. 2009) (explaining that unless statute authorizes the Secretary of the Department of Homeland Security to exercise their discretion, Secretary's determination of eligibility is not discretionary). Further, contrary to the Petitioner's argument, the

[2] The director correctly noted that this was inconsistent with counsel's previous letter saying he was hired on the date of the mailing, [redacted] 2018.

[3] We note that even if the VAWA petition had been filed on [redacted] 2018, the date the Petitioner argues it was filed, he would remain ineligible because the filing would not have been "within two years" of a bona fide marriage with a U.S. citizen. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC) and (ccc) of the Act.

Director did not err by focusing her decision on the time between the Petitioner's divorce and the filing of his VAWA petition as the issue is dispositive.

The Petitioner's divorce occurred more than two years before he filed his VAWA petition. Accordingly, the Petitioner cannot establish a qualifying relationship with his U.S. citizen spouse or his eligibility for immediate relative classification based on that relationship, as required. Sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The petition will therefore remain denied.[4]

ORDER: The appeal is dismissed.

[4] As the Director made no further findings in her decision, we do not address whether the Petitioner has established the remaining eligibility requirements for relief under the VAWA provisions.