U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22260151

Date: JUN. 23, 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 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), concluding that the Petitioner did not establish a qualifying marital relationship, and her corresponding eligibility for immigrant classification. On appeal, the Petitioner submits additional evidence and asserts her eligibility. Upon *de novo* review, we will remand the matter to the Director for issuance of a new decision.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, 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) of the Act. Among other things, the 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). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) determines, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

In this case, the Petitioner, a citizen from Jamaica, indicated on her VAWA petition that she had been married once, to N-R-.[1] In support of her VAWA petition, the Petitioner submitted, in pertinent part, a copy of her marriage certificate to N-R-. Following a review of the Petitioner's record, the Director issued a request for evidence (RFE) which explained that on the Petitioner's non-immigrant visa

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

application, she had indicated that she was in a common law marriage with G-B- in Jamaica, and that she was required to provide evidence that the common law marriage was terminated. The Petitioner's response to the RFE stated that USCIS does not consider common law marriages and included a brief letter from G-B- stating that their relationship had ended. As a result, the Director denied the VAWA petition, explaining that for VAWA petitions, common law marriages are considered by USCIS, and the Petitioner had not provided sufficient evidence to indicate the termination of the common law marriage between her and G-B-.

On appeal, the Petitioner argues that she was mistaken in her belief that she was in a common law marriage with G-B-. In support of her argument, she submits a letter from N-M-R-, an attorney in Jamaica. In this letter, N-M-R- states, "[i]n Jamaica where a single man cohabits with a single woman for a continuous period exceeding five years as if they are in a marital union then subject to a successful Court application, the law can recognize them as spouses under the law providing certain benefits akin to a legal marriage." N-M-R- continues, "[t]here is no legal procedure or formality to establish such unions, neither is there a procedure and/or formality to sever the said union," and explains that the purpose of such unions applies to issues of property rights or estates. N-M-R- indicates that when the parties no longer reside together or begin to pursue other relationships, the union is essentially dissolved, and states that there were never any formal court proceedings declaring a union between the Petitioner and G-B-.

Similarly, updated affidavits submitted by the Petitioner and G-B- state that they were in a relationship from 2003-2018, and had two children together; however, they never entered any official court procedures to document the state of their relationship. In our review, we note that the Petitioner submitted a copy of a portion of the Jamaican Property (Rights of Spouses) Act of 2004 with her response to the Director's RFE, which indicates that a single man and single woman residing together for more than five years may be defined as a spouse, but that such definition would end as of the termination of their cohabitation. In the Petitioner's case, she ceased cohabitation with G-B- when she moved to the United States in 2018.

The record reflects that the Petitioner has submitted relevant evidence that the Director has not had the opportunity to consider, and we will remand the matter to the Director to consider this evidence in the first instance and determine whether the Petitioner has established that she was in a qualifying relationship and has satisfied the remaining eligibility requirements for immigrant classification under VAWA.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.