U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17813916

Date: JUN. 28, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused former spouse of a lawful permanent resident (LPR) under the Violence Against Women Act (VAWA) provisions codified at Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident (VAWA petition), concluding that the Petitioner had not established the requisite qualifying spousal relationship with an LPR and therefore corresponding eligibility for immigrant classification based on that qualifying relationship. On appeal, the Petitioner submits a brief and additional evidence and reasserts her eligibility for the immigrant classification sought.

We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of an LPR may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with the LPR 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)(B)(ii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, a petitioner must show that they are eligible for immigrant classification under section 203(2)(A) of the Act as the spouse of an LPR, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

A petitioner who is the former spouse of an LPR may still file a petition under VAWA if they demonstrate that their marriage to the LPR spouse was legally terminated within the past two years and that the termination was connected to battery or extreme cruelty by the LPR spouse. Section 204 (a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act. However, a VAWA petition must be denied if the petitioner remarries while the petition is pending. *See* 8 C.F.R. § 204.2(c)(1)(ii) ("The self-petitioner's remarriage . . . will be a basis for the denial of a pending [VAWA] self-petition.").

The burden of proof is on a petitioner 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).

U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and resident of El Salvador, filed her VAWA petition in December 2017, based upon a marriage to her former spouse E-A,[1] an LPR. The record reflects that she divorced E-A- in [redacted] 2015, within the two years preceding the filing of her VAWA petition.

The Director denied the petition, concluding that the Petitioner did not establish a qualifying relationship with her former LPR spouse, E-A-, and therefore did not establish her corresponding eligibility for immigrant classification under section 203(a)(2)(A) of the Act, as required by section 204(a)(1)(B)(ii)(II)(aa), (cc) of the Act. Specifically, the Director concluded that the record indicated that the Petitioner had remarried after her divorce from E-A-. In making this determination, the Director relied on the Petitioner's response in part 10 of her VAWA petition, in which she indicated that she had been married twice, and her subsequent statements, provided in response to two requests for evidence and a notice of intent to deny by the Director on this issue, where she maintained that she had never been married before her marriage to E-A- but simultaneously acknowledged that she had indicated she had been married twice on her VAWA petition. The Director further noted that the Petitioner's statements offered no explanation for the referenced discrepancy regarding the number of her marriages and did not address or provide evidence of her remarriage, if she had in fact remarried, as requested.[2]

On appeal, the Petitioner reasserts her eligibility based upon a qualifying relationship to E-A-. Upon *de novo* review, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *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) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The arguments made by the Petitioner on appeal are not sufficient to establish her qualifying relationship to E-A-. On appeal, the Petitioner does not contest the Director's conclusion that, based upon the evidence in the record below, she appears to have remarried sometime after her divorce from E-A-. Rather, the Petitioner contends that the Act does not permit USCIS to inquire into a divorced VAWA petitioner's subsequent remarriage and that she has satisfied the eligibility requirements for VAWA immigrant classification as set forth in the Act. However, although not explicitly addressed in the Act, in addressing the legal status of the marriage establishing the qualifying relationship for a VAWA petition, the applicable VAWA regulation specifically provides that a VAWA petition must be denied if a divorced petitioner remarries during the pendency of the petition. 8 C.F.R.

[1] We use initials to protect the privacy of the individual.

[2] We note that a July 2019 letter of recommendation in the record before the Director from a member of the Petitioner's church described the Petitioner, who was divorced from E-A- at the time, "as a mother and a wife," further supporting the Director's conclusion that the Petitioner appeared to have remarried during the pendency of her VAWA petition.

§ 204.2(c)(1)(ii). Here, the Petitioner was afforded multiple opportunities by the Director to clarify discrepancies in the record indicating that she had been married more than once in order to establish that she had no previous marriages and had not remarried during the pendency of her VAWA petition, as required; however, she did not do so. On appeal, the Petitioner still has not explained why she indicated that she had been married twice on her petition and does not otherwise assert that she did not remarry after her divorce from E-A-.

The Petitioner also asserts on appeal that the Director is prohibited from citing to 8 C.F.R. § 204.2(c)(1)(ii) because it is an *ultra vires* regulation not grounded in the Act, is contrary to Congressional intent, and is in violation of the U.S. Constitution. The Petitioner further maintains that USCIS' reasoning in interpreting section 204 of the Act is not supported by social science research generally recognizing that an abuse victim's relationship with an abusive partner does not necessarily end when they leave their abuser and even enter into a new relationship. While we acknowledge the Petitioner's arguments and sympathize with her circumstances in particular, USCIS lacks authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon,* 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). We are therefore bound by 8 C.F.R. § 204.2(c)(1)(ii), which clearly states that a petitioner's remarriage while their VAWA petition is pending precludes approval of the petition. Moreover, as it relates to the Petitioner's contention that 8 C.F.R. § 204.2(c)(1)(ii) is contrary to legislative intent, we note that in subsequent amendments to the original statutory provisions of VAWA, Congress left alone the interpretation by USCIS that remarriage of a petitioner prior to the approval of a VAWA petition requires denial, pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(ii).[3] *See e.g.,* Title V of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, 114 Stat. 1464, 1518 (Oct. 28, 2000); Title VIII of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960, 3053 (Jan. 5, 2006); Section 6 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, Pub. L. 109-271, 120 Stat. 750, 762 (Aug. 12, 2006); and Title VIII of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 110 (Mar. 7, 2013). Finally, we acknowledge the Petitioner's contention on appeal that 8 C.F.R. § 204.2(c)(1)(ii)) violates her Constitutional right to marry. However, constitutional issues are not within our appellate jurisdiction; therefore, we will not reach this argument in our decision.

Consequently, we find no error in the Director's determination that the Petitioner did not establish the requisite qualifying spousal relationship to an LPR pursuant to section 204(a)(1)(B)(ii) of the Act where she has not overcome evidence in the record indicating that she had remarried during the pendency of her VAWA petition.

III. CONCLUSION

The Petitioner has not established a qualifying relationship with her former LPR spouse and therefore necessarily did not establish corresponding eligibility for immigrant classification under section

[3] As the Petitioner notes, a portion of 8 C.F.R. § 204.2(c)(1)(ii) requiring the marriage of a self-petitioner to the abuser at the time of filing was repealed by the VTVPA. However, the VTVPA left alone the regulation's requirement relating to the remarriage of a Petitioner.

203(a)(2)(A) of the Act as the spouse of an LPR based on that relationship. Consequently, she has not demonstrated her eligibility for VAWA immigrant classification.

ORDER: The appeal is dismissed.