U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19770849

Date: SEP. 19, 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 dismissed a motion to reopen and reconsider. Upon *de novo* review, we will dismiss the appeal.

The Petitioner is a native and citizen of Togo who entered the United States in 2000 as a B-2 nonimmigrant visitor. She was placed in removal proceedings in [redacted] 2006 and was issued an *in absentia* order of removal by an immigration judge in [redacted] 2006. In [redacted] 2008 the Petitioner married her U.S. citizen spouse, E-H-K-,[1] with whom she claimed she resided from November 2008 and at the time of filing her VAWA petition in January 2018.[2] The Director denied the petition, finding that the Petitioner did not establish she was eligible for immigrant classification based on a qualifying relationship or that she entered into marriage in good faith.

We rejected the Petitioner's appeal in February 2021 as untimely, even considering COVID-19 guidance allowing a filing to be accepted within 60 calendar days of an unfavorable decision rather than 33 calendar days, because the Form I-290B was received 175 days after the decision. We also indicated that the office issuing the unfavorable decision may treat an untimely appeal as a motion if that office determines it meets requirements for a motion to reopen or reconsider. *See* 8 C.F.R. § 103.5(a)(1)(ii). The Director determined, however, that it did not meet requirements to be treated as a motion to reopen or reconsider as it was not timely submitted within 33 days as prescribed under 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. The Director also concluded that the Petitioner did not establish she merited a favorable exercise of discretion for which USCIS may excuse the untimely filing of the

[1] We use initials to protect individual identities.

[2] The Petitioner submitted a previous VAWA petition in 2014 that the Director denied, and we dismissed a subsequent appeal.

motion and dismissed the motion under 8 C.F.R. § 103.5(a)(4) for not meeting the filing requirements as defined by 8 C.F.R. 103.5(a)(1)(i).

The issue before us on appeal is whether the Director erred in dismissing the Petitioner's motion as untimely. On appeal, the Petitioner argues, through counsel's brief, that we rejected her prior appeal in error because it was initially returned for a proper filing fee but when resubmitted with a fee, we rejected the filing as untimely. She states that she then received notice of the Director's dismissal of the motion. The remainder of the brief addresses the Director's finding that the Petitioner did not establish she entered into marriage in good faith.

The Petitioner has not shown that the Director's decision finding her motion untimely filed is incorrect. The Petitioner contends that her appeal was improperly rejected for lack of filing fee, causing it to then be untimely filed. Although the record contains a Form I-192, Request for Fee Waiver, the form is incomplete, has no supporting documentation, and has not been adjudicated by USCIS.

ORDER: The appeal is dismissed.