U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27946573

Date: SEP. 14, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

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 petition, concluding that the record did not establish that the Petitioner had entered into a qualifying relationship with his United States citizen spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 of a U.S. citizen may self-petition for immigrant classification if they demonstrate they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. 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). While we must consider any credible evidence relevant to the VAWA self-petition, we determine, 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).

The Petitioner, a native and citizen of Nigeria, filed his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in March 2017, based on his marriage to K-F-[1], a United States citizen. In order to establish his qualifying relationship with K-F-, the Petitioner submitted copies of a Decree Nisi and Decree Absolute issued regarding his previous marriage with R-O-C- in Nigeria. After review of these divorce documents, the Director issued a notice of intent to

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

deny (NOID) informing the Petitioner of concerns regarding his divorce documents. Notably, the Director informed him that, based on information obtained from the United States Consulate in Nigeria, the documents were determined to be counterfeit. The Director informed the Petitioner that the ground for divorce was listed as "irreconcilable differences," which is not one of the eight bases for divorce found in the Nigerian Matrimonial Causes Act of 1970, and that neither the suit number nor the Petitioner's name were located in the [redacted] Judiciary Search. Further, the Director noted that the Decree Nisi and Decree Absolute were signed on the same day by the Assistant Chief Registrar, rather than the Decree Nisi being signed at least 3 months prior to the Decree Absolute.

In response to the NOID, the Petitioner submitted a letter from I-A-, an attorney in Nigeria, a letter from the Assistant Chief Registrar, and new copies of his Decree Nisi and Decree Absolute. In the decision, the Director noted that the letter from I-A- indicated that the phrasing of "irreconcilable differences" found in the Decree Nisi was only a choice of words and did not affect the validity of the documents. However, the Director determined that I-A-'s assertion that it was only a choice of words to state that the marriage was "broken down irretrievably on the ground of irreconcilable differences" continued to be unpersuasive, as "irreconcilable differences" is not one of the grounds found in the Matrimonial Causes Act.

In review of the letter from the Assistant Chief Registrar, the Director acknowledged their statement that a search of their records indicated that the records under Suit Number [redacted] were located and the marriage was dissolved appropriately under Section 15(2)(c) of the Matrimonial Causes Act. This section of the Matrimonial Causes Act requires that the respondent (in this case, the Petitioner) "behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent." *See Matrimonial Causes Act*, Laws of the Federation of Nigeria, Chapter 220 pt II section 15(2), http://www.commonlii.org/ng/legis/num_act/mca197. In the decision, the Director reviewed the new copies of the divorce documents and the letter from the Assistant Chief Registrar and determined that the documents did not conform to the signature stamp that the Assistant Chief Registrar was using at the time the documents were issued. The Director further noted that the new copies of the Decree Nisi stated that "the marriage had broken down irretrievably." The decision indicated that the Decree Nisi did not include any reference to any action on the Petitioner's part which led to this conclusion. The Petitioner has not submitted any evidence or argument to address the Director's conclusion with his appeal.

On appeal, the Petitioner submits a brief. In his brief, he asserts that the Director's conclusion that the divorce decree originally submitted was not authentic was in error. He also contends that "the subsequent valid divorce decree provided sufficient evidence that the [Petitioner] and his spouse were free to marry each other." In his response to the Director's NOID, the Petitioner did not provide an explanation as to how he obtained the initial divorce documents. Though the letter from I-A- contends that the initial documents were valid, there is no explanation from the Petitioner or I-A- as to why the content of the two sets of documents differs. Notably, the initial Decree Nisi, as noted by the Director, only stated that "the marriage had broken down irretrievably on the ground of irreconcilable differences," while the second Decree Nisi stated that "since the marriage the Respondent has behaved in such a way the Petitioner cannot reasonably be expected to live with the Respondent."

The Petitioner's contention on appeal is that the Director failed to review the second set of divorce documents, and states that regulations require USCIS to consider all evidence in the record. In our de

novo review of the record, we determine that the Director reviewed the second set of divorce documents and explained that they were accorded no evidentiary value, and we agree that the documents merit reduced evidentiary weight, as the Petitioner has not addressed the discrepancies noted in the Director's NOID and subsequent decision.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Petitioner has not supplemented the record on appeal to address the discrepancies noted in the Director's NOID and decision, and we disagree with his contention that the Director failed to review the documents submitted in response to the NOID. While we must consider any credible evidence relevant to the VAWA self-petition, we determine, 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).

As such, we determine that the Director reviewed the evidence and explained to the Petitioner why it was insufficient to establish that his prior marriage was dissolved, and that he had not established, by a preponderance of the evidence, that he had entered into a qualifying relationship with K-F-. The Petitioner has not overcome the Director's determination, and therefore has not established that he entered into a qualifying relationship with a United States citizen. As the Petitioner has not established that he is eligible for VAWA classification, his VAWA petition remains denied.

ORDER: The appeal is dismissed.