U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28104944

Date: SEP. 15, 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 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 petition, concluding that the record did not establish that the Petitioner was in a qualifying relationship at the time of filing his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). 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. If the qualifying marriage was legally terminated prior to filing the self-petition, eligibility may still be established if the self-petitioner files within the 2-year period immediately following the termination and establishes that the termination was connected to the battery or extreme cruelty. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

The Petitioner filed his VAWA petition in January 2021, based upon his marriage to M-F-[1], a United States citizen. Following review of the initial evidence, the Director denied the VAWA petition, noting that the record reflected that the marriage between the Petitioner and M-F- was terminated through divorce in [redacted] 2018. The Director determined that as the Petitioner did not file his VAWA

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

petition within the two years immediately following his divorce, he did not establish that he was in a qualifying relationship with a United States citizen, as required.[2]

On appeal, the Petitioner submits a brief. In his brief, he contends that the filing period should be equitably tolled. He cites to *Moreno-Gutierrez v. Napolitano*, 794 F. Supp. 2d 1207 (D. Colo 2011), in which the U.S. District Court, District of Colorado addressed section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa)[3] of the Act, which provides that a self-petitioner may still qualify for VAWA classification if they were the spouse of a lawful permanent resident (LPR) who lost their status within the two years prior to filing due to an incident of domestic violence. The court in *Moreno-Gutierrez* determined that in the case of a self-petitioner whose spouse lost their lawful permanent resident status more than two years prior to the filing of the VAWA petition, the two-year filing deadline at section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act may function as a statute of limitation subject to equitable tolling. However, as the Petitioner concedes on appeal, the decision in *Moreno-Gutierrez* did not address the portion of the statute at issue here - section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act - which requires a self-petitioner to file their VAWA petition within two years of the termination of their marriage to their abusive spouse. Additionally, in contrast to the precedential authority of the case law of a U.S. circuit court, the AAO is not bound to follow the published decision of a U.S. district court. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Further, guidance as located in the USCIS Policy Manual states, "[t]he requirement that a self-petitioner file within 2 years following the termination of the marriage is a condition of eligibility for which there is no waiver or equitable tolling available. The 2-year period cannot be equitably tolled because the statute allows for self-petitioning during the marriage and creates a cut-off date for filing when the marriage has terminated." *See generally* 3 *USCIS Policy Manual* D.3(A)(1), https://www.uscis.gov/policy-manual.

The Petitioner has not supplemented the record with new evidence on appeal, and his argument that his case should be subject to equitable tolling is unavailing. The Petitioner did not file his VAWA petition until more than two years after the termination of his marriage to M-F-. As such, we concur with the Director that he has not established a qualifying relationship, as required.

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[2] The Director's decision also indicated that the Petitioner had not provided sufficient evidence to establish that M-F- was a United States citizen or a lawful permanent resident. On appeal, the Petitioner contends that he submitted a copy of the Form I-797, Notice of Action, from the approval of a Form I-130, Petition for Alien Relative, that M-F- filed on behalf of the Petitioner. After review of the file, a copy of this notice was not located in the record. However, as the Petitioner has not overcome the Director's determination regarding the termination of his marriage to M-F-, we need not make that determination here. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

[3] In the Petitioner's brief, he states that the *Moreno-Gutierrez v. Napolitano* decision was in reference to section 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa) of the Act, which regards a self-petitioning spouse of a United States citizen whose spouse had died within the past two years; however, as noted above, the decision was in reference to section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. Regardless of the error in the Petitioner's statutory citation, neither situation applies to the Petitioner, as his marriage to a United States citizen was terminated by divorce more than two years prior to the filing of his VAWA petition, and he was subject to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

ORDER: The appeal is dismissed.