U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20648511

Date: MAY 17, 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 a motion to reopen and reconsider. The matter is before us on appeal. Upon *de novo* review, we will remand the matter to the Director.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage 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)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must 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; 8 C.F.R. § 204.2(c)(1)(i). A petitioner who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if they were a *bona fide* spouse of a United States citizen within the past two years and demonstrate a connection between the legal termination of the marriage within the past two years and battery or extreme cruelty by the United States citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) 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 U.S. Citizenship and Immigration Services (USCIS) must consider any credible evidence relevant to the VAWA 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 Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The record reflects that the Petitioner is a native and citizen of Mexico who entered the United States in 1992 without inspection. In 2008 he married his U.S. citizen spouse, E-E-V-G-, with whom he claims he resided from 2008 until 2012. He filed his VAWA petition in October 2018, and with the petition he submitted letters of support, medical records, financial records, civil documents, and photographs. The Director denied the petition, finding that the Petitioner did not establish a qualifying relationship and that he was eligible for immigrant classification. The Director determined specifically that the record indicated the marriage was terminated in 2012, so a qualifying relationship did not exist within two years of filing his Form I-360, and that the Petitioner could not demonstrate eligibility for immigrant classification.

The Petitioner filed a motion to reopen and reconsider with the Director arguing that the record does not contain a final entry or judgment for the divorce filed in 2012, that dissolution proceedings were never finalized, that only a testing/parenting plan was before the court, and that the court has no record of divorce proceedings. With the motion the Petitioner submitted a Superior Court of California summary. In denying the motion, the Director acknowledged the assertion that only the parenting plan was resolved in court and the dissolution of marriage was never finalized, but noted that the case number for the dissolution of marriage was the same as the court documents submitted for the parenting plan. The Director found that the argument that the parenting plan was a separate matter was an insufficient basis for a motion to reopen under 8 CFR I 03.5(a)(2), and that the motion also did not provide new facts or give reasons for reconsideration supported by any pertinent precedent decisions.

On appeal, the Petitioner contends that the Director's decision misconstrued evidence and argues that the record contains no final document regarding divorce. With the appeal he submits a declaration from a retired California Superior Court judge affirming that there is no judicial resolution, order, or judgment addressing marital status, and opines that the couple are still legally marriage. The retired judge contends that during his appointment, he handled hundreds of family law matters and remains familiar with filings. He maintains that he reviewed the case on file with the court and found that the matter was filed on April 11, 2012, but was still a pending case, and he identifies the most recent document as a stipulated order in May 2016 concerning tax exemption for the couple's child and that the order refers the matter for further proceedings toward dissolution of marriage.

Upon review of the record, we agree with the Petitioner that evidence does not demonstrate that a divorce was finalized. Evidence shows that the Petitioner's spouse petitioned for dissolution on April 11, 2012, but that document does not indicate a dissolution was granted. Subsequent filings with court pertain to child custody and income/expense disclosures. A May 17, 2016, Finding and Order After Hearing provides that the parties were referred to the Legal Help Center to finalize their divorce case.

As the record indicates that as of 2016, divorce proceedings had not been finalized, we find it appropriate to remand the matter to the Director to consider evidence that the Petitioner remains married, thus establishing a qualifying relationship and eligibility for immigrant classification, and to then determine whether he has satisfied the remaining eligibility requirements for immigrant classification under VAWA.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.