U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612264

Date: MAY 20, 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 spouse of a lawful permanent resident under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 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 did not establish a qualifying marital relationship and her corresponding eligibility for immigrant classification, as required. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

A petitioner who is the spouse or former spouse of a lawful permanent resident may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with their lawful permanent resident spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii) of the Act. Among other things, the petitioner must establish that they are eligible to be classified as an immediate relative under section 203(a)(2)(A) of the Act. Section 204(a)(1)(B)(ii)(II)(cc) of the Act. However, a petitioner's remarriage precludes the approval of a VAWA self-petition. 8 CFR 204.2(c)(1)(ii). 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).

In this case, as the Director found and the Petitioner does not contest, the record shows that the Petitioner's marriage to her purported abuser spouse, A-A-[1], was terminated in [redacted] 2017. The Petitioner subsequently remarried and divorced her second husband, and then filed the instant VAWA petition in August of 2019. The Director denied the petition, quoting 8 CFR 204.2(c)(1)(ii) and concluding that the Petitioner did not establish a qualifying relationship or her corresponding eligibility for immigrant classification.

On appeal, the Petitioner concedes that her remarriage disqualified her from eligibility for immigrant classification, but argues that her subsequent divorce to her second husband "makes her re-eligible for VAWA, returning her to the unmarried status of an abused ex-spouse of a lawful permanent resident." She contends that her remarriage lasted less than two months and that when she filed her VAWA petition, she was an unmarried self-petitioner.

[1] We use initials to protect the identities of the individuals in this case.

We adopt and affirm the Director's decision. *See 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) ("we join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision."). The plain language of 8 CFR 204.2(c)(1)(ii) clearly states that "[t]he self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition." There is no exception to this rule and we lack the authority to waive or disregard the requirements of the statute, as implemented by regulation. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). To the extent the Petitioner cites to the Adjudicator's Field Manual (AFM), U.S. Citizenship and Immigration Services (USCIS) is replacing the AFM with the USCIS Policy Manual. *See USCIS Policy Manual*, https://www.uscis.gov/policy-manual. Significantly, the USCIS Policy Manual specifies that a VAWA petition must be denied if the petitioner remarries before the approval of the petition. 3 *USCIS Policy Manual* D.3(B)(2), https://www.uscis.gov/policymanual (citing *Delmas v. Gonzalez*, 422 F.Supp.2d 1299 (S.D. Fla. 2005) (petitioner's remarriage prior to filing VAWA petition was disqualifying)). The petition will therefore remain denied.

ORDER: The appeal is dismissed.