U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18295399

Date: MAY 23, 2022

Motion on Administrative Appeals Office 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 we summarily dismissed her subsequent appeal. Thereafter, the Petitioner filed a motion to reopen, which we dismissed as untimely. The matter is now before us on a second motion to reopen. Upon review, we will dismiss the motion.

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 with a United States citizen spouse in good faith and that during the marriage, they were battered or subjected to extreme cruelty perpetrated by their 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).

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).

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies the requirements and establishes the petitioner's eligibility for the benefit sought.

II. ANALYSIS

The Petitioner is a native and citizen of Ghana who entered the United States in October 2002 with a B-2 nonimmigrant visa. In [redacted] 2005, she married her U.S. citizen spouse, A-K-A-,[1] with whom she indicates she resided from [redacted] 2005 to January 2017. She filed the instant VAWA petition in July 2017. The Director denied the petition, finding that the Petitioner did not establish by a preponderance of the evidence that she had been battered or was subjected to extreme cruelty by A-K-A- during the qualifying relationship. In June 2019, the Petitioner submitted an appeal, which we summarily dismissed in March 2020, determining that she failed to sufficiently identify any erroneous conclusion of law or statement of fact for the appeal. *See* 8 C.F.R. § 103.3(a)(1)(iv) ("An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."). In May 2020, the Petitioner filed a motion to reopen, and we dismissed it as untimely. In November 2020, the Petitioner again filed a motion to reopen, asserting that her delay in filing her initial motion to reopen should be excused because it was reasonable and beyond her control and that she has otherwise established her eligibility for VAWA classification.

A. Untimely Filing of Motion to Reopen

Pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b), motions must generally be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, USCIS extended filing deadlines associated with the Form I-290B, Notice of Appeal or Motion (Form I-290B). If USCIS issued the decision between March 1, 2020, and October 31, 2021—as here—an applicant may file a Form I-290B within 60 calendar days from the date of the adverse decision,[2] with three days added for service by mail pursuant to 8 C.F.R. § 103.8(b). The untimely filing of a motion to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

The adverse decision in this case, our summary dismissal of her appeal, was issued on March 3, 2020. The Petitioner filed her initial motion to reopen on May 26, 2020, 84 days after the adverse decision. On second motion, the Petitioner clarifies that due to the COVID-19 pandemic, her counsel was stuck in Ghana and his office in the United States was closed. She states that, therefore, he did not obtain the decision summarily dismissing her appeal until late May 2020 and could not file the motion to reopen any earlier. Upon review, the Applicant has submitted sufficient evidence to establish that her delay in filing her initial motion to reopen was reasonable and beyond her control as contemplated by 8 C.F.R. § 103.5(a)(1)(i) and, accordingly, we will consider it on the merits.

B. May 2020 Motion to Reopen

As noted, the relevant regulation provides that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). In addition, by regulation, the scope of a motion is limited to "the prior

[1] We use initials to protect individual identities.

[2] *See* "USCIS Extends Flexibility for Responding to Agency Requests," (Dec. 30, 2021), https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-0.

decision[.]" 8 C.F.R. § 103.5(a)(1)(i). As stated above, we summarily dismissed the Applicant's appeal based on a failure to identify an erroneous conclusion of law or statement of fact. As such, the issue before us is whether on motion, the Petitioner has stated new facts relating to our summary dismissal that would warrant a reopening of the proceeding.

On motion, the Petitioner provides evidence that relates to the Director's finding that she did not establish that she has been battered by or has been the subject of extreme cruelty perpetrated by her U.S. citizen spouse. The Petitioner does not address, present documentation relating to, or otherwise make any assertions regarding our summary dismissal of her appeal. As a result, she has not satisfied the motion to reopen requirements under 8 C.F.R. § 103.5(a)(2). Specifically, she has not "state[d] new facts to be provided in the reopened proceeding . . . supported by affidavits or other documentary evidence." *Id.*

ORDER: The motion to reopen is dismissed.