U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20946537

Date: MAY 24, 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 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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that, because the Petitioner and his spouse divorced more than two years prior to the filing of his VAWA petition, he did not establish a qualifying relationship with a U.S. citizen or corresponding eligibility for immigrant classification. On appeal, the Petitioner submits a brief reasserting his eligibility. 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). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that, among other requirements, they entered into the marriage with the U.S. citizen spouse in good faith, and the petitioner was battered or subjected to extreme cruelty perpetrated by their spouse. Section 204(a)(1)(A)(iii)(I) of the Act. As relevant to a former marriage, a petitioner must establish that their marriage to a U.S. citizen was "within the past 2 years" prior to filing the self-petition and that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. 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). Although we 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).

II. ANALYSIS

The Petitioner filed his VAWA petition in August 2019, based on his previous marriage to N-A.[1] The evidence in the record indicates that the Petitioner and N-A- divorced N-A- in [redacted] 2015. The Director denied the petition, determining that the Petitioner's marriage was terminated in 2015, more than two years before the petition was filed. Accordingly, the Director concluded that the Petitioner could not demonstrate a qualifying relationship to a U.S. citizen or his corresponding eligibility for immigrant classification, as required.

On appeal, the Petitioner contends that the Director erred in concluding that he did not demonstrate a qualifying relationship to a U.S. citizen because he filed his VAWA petitioner more than two years after the termination of his marriage to N-A-. Specifically, he argues that his divorce decree was "reopened" in [redacted] 2016, after the Arkansas Department of Health and Human Services filed a *Petition for Emergency Custody and Dependency-Neglect* (emergency petition) removing a newborn child from N-A-'s custody and suspending her visitation with the two children she shared with Petitioner. He further argues that the case was not concluded until a judge entered a *Review and Closing Order* in [redacted] 2018. He maintains that he had a qualifying relationship with a U.S. citizen spouse because his case was finalized in [redacted] 2018, and he filed his VAWA petition in August 2019.

We agree with the Director that the Petitioner's VAWA petition was not filed within two years of his prior marriage, as required. The divorce decree in the record shows it was signed by a judge in [redacted] 2015, at the Circuit Court of [redacted] Arkansas, Domestic Relations Division, [redacted] District. It stated that the Petitioner's spouse had failed to appear or answer the Petitioner's complaint for divorce and awarded an absolute divorce to the Petitioner "built upon personal and general indignities, which ha[d] occurred in [the] State within the past five (5) years." It also resolved child custody, visitation, debts and personal property, and concluded by stating that the matter was "ordered, adjudged and decreed." The decree was subsequently stamped as "filed" by the Deputy Clerk in [redacted] 2015.

It is well-settled under Arkansas law that a judgment or decree is not effective until it is entered as provided in Rule 58 and Administrative Order No. 2. *See Morrell v. Morrell*, 889 S.W. 2d 772, 773-74 (1994) (stating that "Rule 58 of the Arkansas Rules of Civil Procedure provides that a judgment or decree is effective only when set forth on a separate document and entered in the docket as provided in Arkansas Supreme Court Administrative Order 2"); *see also Nance v. State*, 891 S.W.2d 26, 27 (1994) (finding "[t]he purpose of Rule 58 was to provide a definite point at which a judgment, be it a decree of divorce or other final judicial act, becomes effective"). Administrative Order No. 2(b)(2) of the Supreme Court of Arkansas stipulates that, "[t[he clerk shall denote the date and time that a judgment, decree or order is filed by stamping or otherwise marking it with the date and time and the word 'filed.'" Ark. Sup. Ct. Admin. Order No. 2(b)(2). A judgment, decree, or order is entered when so stamped or marked by the clerk, irrespective of when it is recorded in the judgment record book." *Id.* Furthermore, we note that the emergency petition filed by the Arkansas Department of Human Services in Juvenile Court and the Petitioner's divorce complaint that he filed in Family Court are two entirely separate matters. While the emergency petition revisited custody and visitation of the

[1] Initials are used to protect the individual's privacy.

Petitioner's and his former spouse's two children, it did not vacate or otherwise modify his divorce, which was finalized according to Arkansas law in [redacted] 2015.

The language of section 204(a)(l)(A)(iii)(II)(aa)(CC) of the Act clearly states that to remain eligible for immigrant classification despite the termination of a marriage to a U.S. citizen spouse, a petitioner must have been the bona fide spouse of a U.S. citizen "within the past 2 years." The Act does not contain any exception under which a petitioner may file a VAWA petition after the two-year period following the termination of marriage. *See id.*; *see also* 3 *USCIS Policy Manual* D.3(A)(1), https://www.uscis.gov/policy-manual (providing, as guidance, that "[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"). We lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials).

The Petitioner filed his VAWA petition in August 2019, more than two years after his prior marriage was ordered, adjudged, and decreed as dissolved by a Circuit Court Judge in 2015. The Petitioner is therefore ineligible for VAWA classification because he has not demonstrated a qualifying spousal relationship with a U.S. citizen, or that he is eligible for immediate relative classification based upon that relationship. The petition will therefore remain denied.

ORDER: The appeal is dismissed.