U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22816096

Date: OCT. 31, 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 the abused spouse of a lawful permanent resident (LPR) 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) because the Petitioner and her spouse divorced more than two years prior to the filing of the VAWA petition. The matter is now before us on appeal. 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 of an LPR may self-petition for immigrant classification if the petitioner demonstrates that they entered into marriage with the LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by their LPR spouse. Section 204(a)(1)(B)(ii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, a petitioner must show that they are eligible for immigrant classification under section 203(2)(A) of the Act as the spouse of an LPR, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(B)(ii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). A petitioner who is the former spouse of an LPR may still file a petition under VAWA if they demonstrate that their marriage to the LPR spouse was legally terminated within the past two years and that the termination was connected to battery or extreme cruelty by the LPR spouse. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Senegal, last entered the United States in 1996. She had previously married her spouse, B-B-,[1] in Senegal in 1987 or 1988, when she was a teenager.[2] After arriving in the United States, B-B- became an LPR in 2004. The Petitioner filed the instant VAWA petition in September 2018 based on a claim of battery and extreme cruelty by B-B-. The Director denied the VAWA petition because the Petitioner provided evidence that she and B-B- were divorced in Senegal in [redacted] 2005, more than two years prior to the Petitioner's filing of her VAWA petition in 2018, and the Petitioner therefore did not meet the requirement at section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

The Petitioner indicated on her VAWA petition that she has been married once and is divorced. In support of her VAWA petition, she submitted a psychological evaluation which stated that she "reported she has been married and divorced twice." She informed the psychologist that B-B- was her first spouse and that she remained married to him from the time she was 16 or 17 years old until she was approximately 34 years old. She stated that she then married someone else in a "religious (not legal) marriage" when she was about 38 years old and that relationship ended when she was about 47 years old. With regard to B-B-, the Petitioner informed the psychologist that he was her stepbrother and that her family forced her to marry him in Senegal, and that after enduring years of severe abuse by B-B- in the United States she decided to "get away from this man." She told the psychologist that since telling B-B- that she wanted to separate, she had seen him approximately once per year when he visited their children.

Noting the information in the psychological evaluation that the Petitioner had been married and divorced twice, the Director issued a request for evidence (RFE). The Director asked the Petitioner to explain the discrepancy between her claim on her VAWA petition that she had been married and divorced once and her statement to the psychologist that she was married and divorced twice. Further, the Director requested evidence that the Petitioner's marriage(s) had been legally terminated. In response, the Petitioner provided a *Divorce Certificate* issued in [redacted] Senegal, confirming that the marriage between the Petitioner and B-B- was "dissolved on [redacted] 2005 by mutual consent." She also submitted a personal affidavit in which she stated that B-B- "divorced [her] in [redacted] Senegal in 2005 . . . ." Additionally, the Petitioner claimed that she "entered into a Muslim marriage in 2007" with someone named S-J- and they "had a Muslim divorce in 2015. There are no papers to commemorate the marriage or divorce as it was done in a Mosque and was never registered civilly with any government authority." The Petitioner also submitted, in relevant part, a letter from a friend who stated that she had grown up with the Petitioner "and her ex-husband Mr. [B-B-]" in Senegal and remained in contact with them in the United States.

The Petitioner asserts in a statement on appeal that B-B- engaged in "deceitful and manipulative actions," including forcing her to file a fraudulent asylum application and later reporting the fraud, leading to the issuance of a removal order against her; marrying additional women during his trips to Senegal and telling her after he returned; filing a false police report against her; leaving her and their children alone in an

[1] We use initials to protect privacy.

[2] The Petitioner indicated on her VAWA petition that she and B-B- married on [redacted] 1988. The record contains a divorce certificate indicating that they were married on [redacted] 1987.

apartment in Ohio with unpaid rent while he worked in New York; and telling her that he had applied for a green card on her behalf when he had not done so. As a result of his actions, she "decided to end [the] relationship." However, the Petitioner states that she did not file for divorce and that "[t]o [her] being separated and being divorced are the same thing." She claims that she "never signed any paper relating to the divorce" and that she "know[s] nothing when he filed the divorce in Senegal or even if he did." According to the Petitioner, if she referred to "divorce" in the past, she "did not base that on any legal document that she knew of."

On appeal, the Petitioner's counsel[3] states that "the divorce was fraudulent" and that the Petitioner has difficulty understanding these proceedings because she "is a very helpless person battered by the machinations of her husband's duplicitous prior actions . . . ." Although we acknowledge evidence in the record that the Petitioner is illiterate, that she claims B-B- deceived and controlled her in the past, there is no evidence to support counsel's claim that the divorce was "fraudulent." Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Contrary to counsel's assertion that the divorce was fraudulent, which lacks any explanation, the Petitioner previously submitted the divorce certificate in support of her claims and provides no evidence on appeal that it was not legally issued. The Petitioner's statement indicates that B-B- attempted to conceal some of his actions and that she may have lacked awareness of his filings, including marriage or divorce proceedings as well as requests for immigration benefits. However, the record does not support the Petitioner's claim that she did not know of her divorce with B-B-, as she previously submitted a divorce certificate in response to the Director's RFE. On appeal, she does not acknowledge the divorce certificate or explain its relevance to her current claim that she does not know whether B-B- filed divorce and did not base her prior statements "on any legal document." Furthermore, even if the Petitioner were somehow unaware of the divorce, which the evidence does not indicate, this would not waive the requirement of the statute that the divorce must have occurred within two years prior to the filing of her VAWA petition. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

The Petitioner also argues on appeal that the deadline for the filing of the VAWA petition should be equitably tolled because the two-year deadline for filing is a statute of limitations and not a statute of repose. In support of this argument, the Petitioner cites to a non-binding district court case, *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011). However, in contrast to the precedential authority of a U.S. circuit court of appeals, we are not bound to follow the published decision of a U.S. district court. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993) (explaining that "[i]f an agency of the Federal Government were required to follow the decision of a district court within that tribunal's jurisdiction, other judges from that same district would never have the opportunity to review the issue presented."). In addition, although certain filing deadlines may be statutes of limitations subject to equitable tolling in the context of removal or deportation proceedings, the Petitioner does not cite to any precedential decisions finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (time limit for filing motions to reopen under Nicaraguan Adjustment and Central American Relief Act (NACARA) is a statute of

[3] We notified the Petitioner in separate correspondence that the record does not contain a valid, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and that we will send all notices, decisions, and other communications only to the Petitioner. However, we acknowledge the arguments of counsel in the brief the Petitioner submitted.

limitations subject to equitable tolling) *with Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). The Petitioner also cites *CTS Corp. v. Waldburger*, 134 S. Ct. 2175 (2014), in which the U.S. Supreme Court held that a statute of limitations begins to run when a cause of action accrues, and argues that the purpose of a statute of limitations "is not furthered by not barring an untimely action brought by a plaintiff who is prevented by extraordinary circumstances from timely filing." However, the Petitioner provides no precedential legal authority to demonstrate that *CTS Corp. v. Waldburger* applies in the context of visa petitions. Additionally, even if we had authority to waive the two-year limitation for extraordinary circumstances, which we do not, she does not provide any evidence of such circumstances that prevented her from filing her VAWA petition within two years of her divorce. The Petitioner filed her VAWA petition in 2018, more than 18 years after her divorce from B-B- in 2005, and does not explain the delay.

We acknowledge the difficult circumstances the Petitioner endured during her abusive marriage to B-B- and the hardships she and her children have experienced. However, the Petitioner does not meet the statutory requirement at section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act that her divorce from her abusive spouse have occurred within two years prior to the filing of her VAWA petition. Accordingly, she is ineligible for immigrant classification under VAWA and we must dismiss her appeal.

ORDER: The appeal is dismissed.