U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25652610

Date: APRIL 14, 2023

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 the abused spouse of a lawful permanent resident (LPR) under the 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 that she filed her VAWA petition within two years following the termination of her marriage to her LPR spouse. We dismissed a subsequent appeal, and the matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

I. LAW

A petitioner who is the spouse of an LPR may self-petition for immigrant classification if they demonstrate they entered into marriage with the LPR in good faith and that, during the marriage, they were battered or subjected to extreme cruelty perpetrated by their LPR spouse. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). Amongst other requirements, a petitioner who is divorced from their LPR spouse may file a self-petition only up to two years following the termination of a qualifying marriage. Section 204(a)(1)(A)(iii)(II)(CC) of the Act. Petitioners may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give 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 new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

The record reflects that the Petitioner married B-B-[1] in Senegal, prior to her entry into the United States in 1996. 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-. Prior to issuing a decision, the Director issued a request for evidence (RFE), asking the

[1] We use initials to protect the identity of individuals.

Petitioner to explain a discrepancy between her claim on her VAWA petition that she had been married and divorced once and her statement to a psychologist that she was married and divorced twice. The Director also requested evidence that the Petitioner's marriage(s) had been legally terminated.

In response to the RFE, the Petitioner provided a divorce certificate issued in [redacted] Senegal, stating that the marriage between the Petitioner and B-B- was "dissolved on [redacted] 2005 by mutual consent." She also submitted a sworn statement in which she asserted that B-B- "divorced me in [redacted] Senegal in 2005 and continued to be a bad father and not help support the family he had deserted. I therefore entered into a Muslim marriage in 2007 with [S-J-]." The Director denied the VAWA petition, concluding that the Petitioner did not establish that she filed her VAWA petition within two years following the termination of her marriage to her LPR spouse, as required.

On appeal, the Petitioner asserted that the divorce certificate is fraudulent, and in our prior decision, incorporated here by reference, we highlighted that the Petitioner provided no evidence that the divorce certificate was not legally issued. We determined that the record did not support the Petitioner's claim that she did not know of her divorce with B-B-, as she submitted the divorce certificate in response to the Director's request for evidence that her marriage(s) had been legally terminated. The Petitioner also argued 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. We dismissed the appeal, concluding that even if we had authority to waive the two-year limitation for extraordinary circumstances, which we do not, the Petitioner did not provide any evidence of such circumstances that prevented her from filing her VAWA petition within two years of her divorce.

On motion, the Petitioner again contends that the divorce certificate is fraudulent, and in support of this contention, she submits a "judgment of heredity" and a letter from a law firm in Senegal. The letter indicates that the judgment number indicated on the divorce certificate corresponds to a "judgment of heredity rendered in a totally different case . . . we believe that the divorce certificate dated [redacted] 2016, which was sent to us is a forgery, given the information it contains, and which does not correspond to the data collected from the court archives."

We find that the new evidence does not overcome our previous determination regarding the termination of the Petitioner's marriage to B-B-. As noted above, the Petitioner asserted in a sworn statement that her marriage to B-B- was terminated in 2005, and she submitted the divorce certificate as evidence of that assertion. In addition, while the Petitioner contends that the judgment number on the divorce certificate corresponds to a judgment of heredity, the issuing authority for the two documents are separate legal entities – the divorce certificate was issued by the City of [redacted] – while the judgment of heredity was issued by the Court of Appeals of [redacted] This discrepancy contained in evidence meant to resolve prior inconsistencies in the record diminishes the evidentiary weight we accord to the documentation submitted on motion.

In the end, while we must consider any credible evidence relevant to a VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Under this evidentiary standard, the documentation submitted by the Petitioner on motion is not sufficient to demonstrate that she has met her burden of establishing a qualifying relationship to an LPR within two years of filing her VAWA petition, as required. Consequently, she has not demonstrated the requisite qualifying relationship for VAWA classification. The petition will therefore remain denied.

ORDER: The motion to reopen is dismissed.