U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24274303

Date: FEB. 15, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at the Immigration and Nationality Act (the Act) 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 Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the record did not establish a qualifying marital relationship and her corresponding eligibility for immigrant classification. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates, among other requirements, a qualifying relationship with their U.S. spouse, that they were battered or subjected to extreme cruelty perpetrated by the spouse and have resided with the spouse. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). A petitioner who was a bona fide spouse of a U.S. citizen within the past two years and who demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty perpetrated by the U.S. citizen spouse remains eligible to self-petition under these provisions. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

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).

The Petitioner filed a VAWA petition in December 2019 on the basis of her marriage to a U.S. citizen, whom she subsequently divorced. In support of her petition, she provided a complete copy of a Final Decree of Divorce issued by the District Court, County Court At [redacted] Texas (Court). In this divorce decree, the Court stated that the Petitioner's divorce from her U.S. citizen spouse was "judicially PRONOUNCED AND RENDERED in court on [redacted] 2017 and further noted on the court's docket sheet on the same date but signed on [redacted] 2018." The Director

denied her VAWA petition, concluding that the Petitioner had divorced her spouse in [redacted] 2017, more than two years before she filed her petition, and therefore had not established that she was in a qualifying relationship with her prior U.S. citizen spouse.

The Petitioner contends on appeal that she filed the instant VAWA petition within two years of her divorce from her former U.S. citizen spouse because her divorce became an enforceable order on [redacted] 2018, the date that the divorce decree was signed by the Court. She cites to Chapter 306A of the Texas Rules of Civil Procedure, which provides that the date that the judgement or order is signed determines the beginning of the period of the court's plenary power to "grant a new trial or to vacate, modify, correct or reform a judgment or order" and for filing various motions on these judgements.[1] However, Chapter 306A of the Texas Rules of Civil Procedure also states that "this rule shall not determine what constitutes rendition of a judgment or order for any other purpose." Further, Texas case law supports the Director's conclusion that the Petitioner's divorce became effective in November 2017 when the Court judicially pronounced and rendered it so. *See Ex parte Mikeska* 608 S.W.2d 290, 291 (Tex. App. 1980), citing to *Corder v. Corder*, 189 S.W.2d 100 (Tex. Civ. App. 1945, writ ref.), (finding that a divorce decree is rendered when it is completely announced); *see also Henry v. Cullum Companies, Inc.* 891 S.W.2d 789, 792 (Tex. App. 7 Dist. 1995) (finding that the judgement becomes effective at the time of the court's decision's rendition and that the signature of the court does not change the date that the judgement was rendered). As the record reflects that the Petitioner filed her VAWA petition in January of 2019, she has not demonstrated, by a preponderance of the evidence, that she filed this petition within two years of the legal termination of her marriage with her U.S. citizen spouse, and therefore that she had the requisite qualifying relationship to a U.S. citizen at the time of filing.[2] Section 204(a)(1)(A)(iii)(II)(aa) of the Act.[3]

We further acknowledge the Petitioner's argument on appeal that her U.S. citizen child has a constitutional liberty interest in maintaining family ties and accordingly that the Petitioner's VAWA petition merits favorable discretion.[4] However, constitutional issues are not within our appellate jurisdiction; therefore, we will not reach this argument here.

ORDER: The appeal is dismissed.

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[1] More specifically, Chapter 306A provides that these filings include, but are not limited to, "motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law."

[2] We do not reach the additional statutory requirement of whether the Petitioner demonstrated a connection between the divorce and the claimed battery or extreme cruelty perpetrated by her former spouse.

[3] The plain language of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act clearly states that to remain eligible for immigrant classification despite the termination of a marriage to U.S. citizen spouse, a petitioner must have been the bona fide spouse of a U.S. citizen "within the past 2 years." 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).

[4] We note that in her brief, the Petitioner cites to *Jimenez v. Nielsen* 334 F. Supp. 3d 370, 384-84 (D. Mass 2018) and *Mendoza-Ayala v. Pompeo* Civil No. 19-2522 (DWF/TNL) (D. Minn. 2020). However, United States District Court decisions are not binding authority; further the plaintiffs in each of these cases are distinguishable from the Petitioner as they sought, and were denied, discretionary waivers for grounds of inadmissibility under 8 C.F.R. § 212.7.