U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24708390

Date: FEB. 28, 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 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 the Petitioner did not establish he had a qualifying relationship as the spouse of a U.S. citizen. The matter is now before us on appeal. 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). The Administrative Appeals Office reviews 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 if the petitioner demonstrates, in part, that 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 the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must submit evidence of the relationship in the form of a marriage certificate and proof of the termination of all prior marriages for the petitioner and the abuser. 8 C.F.R. § 204.2(c)(2)(ii). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) determines, 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).

The Petitioner, a native and citizen of Nigeria, filed his VAWA petition in April 2019 based on his marriage to a U.S. citizen. The Director issued a Request for Evidence (RFE), seeking proof that the Petitioner's prior marriage was terminated because the Petitioner had only submitted a Divorce Nisi from Nigeria. The Director also requested evidence of good moral character, and evidence of a good faith marriage. In response to the RFE, the Petitioner submitted his affidavit, several letters of support and copies of the following: Decree Nisi of Dissolution of Marriage, Certification of Decree Nisi Having Become Absolute, Maryland Certified Copy of Marriage Record, Maryland Marriage Certificate, several photographs, fingerprint submission receipt from the Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, uncertified 2019

federal tax return (married filing separately), and Bank of America account summaries for February 2020 to April 2020. The Director denied the petition determining that the Petitioner had not submitted sufficient evidence to establish that his first marriage was terminated and that the divorce documents did not appear to be valid. The Director noted that the Decree Nisi and Decree Absolute listed the suit number as [redacted] and this was an invalid suit number according to information provided to USCIS by the U.S. Consulate in [redacted] Nigeria, and the [redacted] Judiciary. The Director noted that the Petitioner married his former spouse in Nigeria on [redacted] 2015. The Divorce Nisi was dated [redacted] 2016, and the Decree Absolute was dated [redacted], 2017. The Director noted that in Nigeria, a marriage entered into less than two years prior requires the couple to apply for leave from court to initiate the divorce. The Director observed that the divorce documents did not indicate that leave from court was obtained to dissolve the marriage even though it was less than two years old. And that the Divorce Nisi contained at least one typographical error listing "Respondant" instead of respondent. Finally, the Director noted that a search of the online case status information for the [redacted] Judiciary by the suit number and the names provided on the divorce documents did not produce any results. Hence, the Director concluded that because the Petitioner did not establish by a preponderance of the evidence that his prior marriage was terminated, he did not have a qualifying relationship with a U.S. citizen spouse.

On appeal, the Petitioner argues that the Director was required to issue a notice of intent to deny (NOID) prior to denying the petition. He argues that he did not have an opportunity to address the Director's concerns regarding the validity of the divorce documentation which was the sole reason he was found statutorily ineligible for VAWA classification. We disagree with the Petitioner. The regulations provide that:

> If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding. (ii) Determination of statutory eligibility. A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner . . . [.]"

8 C.F.R. § 103.2(b)(16)(i). Moreover, and generally, USCIS is "required to issue a NOID when derogatory information is uncovered during the course of the adjudication that is not known to the benefit requestor and USCIS intends to deny the benefit request on the basis of that derogatory information. The benefit requestor may be either unaware of the derogatory information or unaware of its impact on eligibility." *See* 1 *USCIS Policy Manual* E.6(F)(4), https://www.uscis.gov/policymanual. However, the Director was not required to issue a NOID, especially where the Petitioner was already on notice that acceptable proof of termination of a marriage in Nigeria consisted of a Divorce Absolute and a Divorce Nisi, and the Petitioner himself submitted the derogatory evidence relied upon by the Director. Nonetheless, even if the Petitioner could establish that he did not have notice, the Director's denial provided such notice and on appeal, the Petitioner does not address the validity of the divorce documents or offer any explanation regarding the discrepancies.

The Petitioner has not established by a preponderance of the evidence that his prior marriage was terminated, and consequently that he has a qualifying relationship as the spouse of a U.S. citizen. Accordingly, he has not demonstrated that he is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.