U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27258753

Date: JUL. 3, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner had a qualifying relationship with a U.S. citizen spouse within two years of the date of filing the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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. On appeal, the Petitioner argues that he qualifies for VAWA classification despite filing his petition more than two years after the termination of his marriage to a U.S. citizen.

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the petitioner or their child was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1). In addition, a petitioner who is divorced from their United States citizen spouse must demonstrate that they were a bona fide spouse of a United States citizen within the past two years. Section 204(a)(1)(A)(iii)(II)(CC) 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, a citizen and national of Kazakhstan, entered the United States as a non-immigrant student in 2012 and has not departed. He married J-N-A-,[1] a U.S. citizen, in [redacted] 2017 and divorced in [redacted] of the same year. The Petitioner filed his first VAWA petition in December 2017 based on

[1] We use initials to protect privacy.

his relationship with J-N-A-. The Director denied that petition in March 2020 and no appeals or motions were filed in relation to the Director's denial. The Petitioner filed the current VAWA petition in July 2020 based on the same relationship. The Director denied the current petition concluding that the Petitioner did not file it within two years of the termination of his marriage to J-N-A- and did not otherwise have a qualifying relationship for classification under VAWA. On appeal, the Petitioner concedes that he divorced his prior spouse in [redacted] 2017 but states that the Director erred by not considering the evidence provided with the current petition meant to overcome the Director's prior determination in the March 2020 decision. He further states that his current VAWA petition should be treated as a joint petition together with the March 2017 VAWA petition.

Upon de novo review, we conclude that the Petitioner has not established a qualifying relationship with a U.S. citizen spouse as required for classification under VAWA. While the Petitioner requests that we consider the current and previous VAWA petition as a combined record, he has not cited any legal authority that would allow us to combine two separate and distinct petitions for the purpose of appeal. Regulations require that a petitioner establish their eligibility for the immigration benefit sought at the time of filing. 8 C.F.R. § 103.2(b)(1). USCIS considers a benefit request to be received as of the date it physically or electronically arrives at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). Each benefit request is reviewed based on the evidence submitted at the time the request is filed with USCIS. *See generally* 8 C.F.R. §§ 103.2(a)(1), (b)(1).

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act provides USCIS with the jurisdiction to consider a VAWA petition filed by an individual who was the bona fide spouse of a U.S. citizen within the past two years. This filing deadline is integral to the eligibility of a VAWA petitioner. The Petitioner has not established his eligibility for VAWA classification with the current petition because more than two years have passed between the termination of his marriage to his U.S. citizen spouse and the filing of his current VAWA petition. The Act does not contain an exception under which a petitioner may file a VAWA petition after the two-year period following the termination of marriage. We may not change the terms of the statutory eligibility requirements and 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) (as long as regulations remain in force, they are binding on government officials); *Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1142-45 (11th Cir. 2009) (explaining that unless statute authorizes the Secretary of the Department of Homeland Security to exercise their discretion, Secretary's determination of eligibility is not discretionary). Further, contrary to the Petitioner's argument, the Director did not err by focusing their decision on a single issue of ineligibility as the identified basis for denial is integral to the Petitioner's eligibility for the requested benefit.

The Petitioner's divorce occurred more than two years before he filed the current VAWA petition. Accordingly, the Petitioner cannot establish a qualifying relationship with his U.S. citizen spouse or his eligibility for immediate relative classification based on that relationship, as required. The petition will therefore remain denied.

ORDER: The appeal is dismissed.