U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26807989

Date: JUL. 19, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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)(l)(A)(iii). The Director of the Vermont Service Center (the Director) denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse or Child of U.S. Citizen)(VAWA petition). The matter is now before us on appeal. 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 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)(l)(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(a)(2), (c)(2)(ii).

In July 2017, the Petitioner, a citizen of Nigeria, filed a VAWA petition wherein he indicated that he had been married two times. In 2022, through a request for evidence (RFE), the Director informed the Petitioner that the record did not contain satisfactory evidence of the legal termination of his prior marriage to M-A-[1] to establish that he was free to marry A-C-, his U.S. citizen spouse. The Director noted that the previously submitted documentation indicated the Petitioner's divorce was finalized in [redacted] 2016, but the suit number referenced on the divorce documents referenced the year 2013. Additionally, the Director explained that the suit number and the signature of the assistant chief registrar on the divorce documentation did not appear to meet the reciprocity tables for Nigerian divorces. The Director also detailed that the termination of the Petitioner's marriage to M-A- could not be found on the [redacted] Judiciary website. As a result, the Director requested "additional

[1] Initials are used throughout this decision to protect the identities of the individuals.

evidence and an explanation of these inconsistencies" to establish that the marriage between the Petitioner and M-A- was legally terminated.[2]

In response to the RFE, the Petitioner asserted that his first marriage was legally terminated and he is thus eligible for the benefit sought. In support, he submitted July 2022 documentation to establish that he hired a Nigerian attorney to verify the authenticity of his divorce documentation. In addition, the Petitioner submitted a letter purportedly from the assistant chief registrar, dated August 12, 2022, confirming the validity of the divorce, including the date it was instituted (2013), the case number, and the parties involved (the Petitioner and M-A-). The letter also explained that a search for the divorce records of the High Court's public online search of litigation cases rendered no results because the Petitioner's divorce was commenced in 2013, before the electronic filing system was introduced in 2014. The letter also verified the correctness of the format of the suit number provided on the divorce documentation and detailed that a suit number would "rightly not match the year of divorce."[3]

The Director denied the petition, determining that the letter written purportedly by the assistant chief registrar was not authentic because the signature did not match the exemplars of the assistant chief registrar on file with USCIS. The Director also stated that a search of the Judiciary website for the termination of the marriage between the Petitioner and M-A- did not provide any results. Because the Petitioner did not establish that his first marriage was legally terminated, the Director concluded that he did not establish a qualifying relationship with a U.S. citizen.[4]

On appeal, counsel asserts that the Petitioner's first marriage was legally terminated and he is thus eligible for the benefit sought. He contends that the suit number on the divorce documents indicates the year 2013 because that is when the proceedings to terminate the marriage were initiated. Counsel also contends that the assistant chief registrar's signature is authentic and the exemplars referenced by the Director "may not include the one for the Assistant Chief Registrar under discussion." Counsel further states that a search for the divorce records of the High Court's public online search of litigation cases rendered no results because the Petitioner's divorce was commenced in 2013, before the electronic filing system was introduced. 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.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting

[2] The Director also requested additional documentation to establish A-C-'s U.S. citizenship, the Petitioner's joint residence with A-C-, the Petitioner's battery or extreme cruelty by A-C-, and the Petitioner's good faith marriage to A-C-.

[3] The Petitioner also submitted documentation relating to A-C-'s U.S. citizenship, his joint residence with A-C-, the Petitioner's battery or extreme cruelty by A-C-, and the Petitioner's good faith marriage to A-C-.

[4] The Director also determined that the Petitioner had not established joint residence and a good faith marriage to A-C-. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his joint residence and good faith marriage to M-A-. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). On appeal, the Petitioner has not overcome the deficiencies raised by the Director. We also note that the Decree Nisi of Dissolution of Marriage states that the Petitioner and M-A- were married on [redacted] 2009, but the Certificate of Decree Absolute indicates that the Petitioner and M-A- were married on [redacted] 2010. The Petitioner does not explain this discrepancy. Nor does the letter provided purportedly by the assistant chief registrar address and resolve this conflicting information.

On appeal, the Petitioner has not overcome the Director's finding that the authenticity of the submitted court documentation has not been established. Therefore, without sufficient evidence of the legal termination of his first marriage, the Petitioner has not met his burden of establishing a qualifying marital relationship with a U.S. citizen for purposes of immigration classification under section 204(a)(1)(A)(iii) of the Act. Because the Petitioner did not demonstrate a qualifying marital relationship, he also necessarily cannot establish that he is eligible for immediate relative classification under VAWA based on such a relationship. The petition will therefore remain denied.

ORDER: The appeal is dismissed.