U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 25385280

Date: MAR. 1, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen

The Petitioner seeks immigrant classification under the Violence Against Women Act (VAWA) provisions codified in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as an abused spouse of a U.S. citizen. The Director of the Vermont Service Center (VSC) denied the Form I-360, Petition for Abused Spouse 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). On appeal, the Petitioner submits a letter asserting her eligibility. 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 or former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates 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)(I) of the Act. Among other things, a petitioner must establish that their current or prior marriage to a U.S. citizen was "within the past 2 years," and that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. Section 204(a)(1)(A)(iii)(II) of the Act.

The Petitioner, a native and citizen of Peru, married R-R-[1] in Peru in [redacted] 1994, and divorced him in [redacted] 1994 in [redacted] County, Florida. The Petitioner last entered the United States unlawfully via [redacted] Texas, in or around November 1995. The Petitioner remarried R-R-, who was by then a naturalized U.S. citizen, in [redacted] 2012 in [redacted] County, Florida. In [redacted] 2017, the Petitioner divorced R-R- in [redacted] County, Florida. U.S. Citizenship and Immigration Services (USCIS) received her current VAWA petition in March 2020, over two years after the Petitioner last divorced R-R-. The Director denied the VAWA petition, concluding that the Petitioner had not demonstrated that she had a qualifying relationship as a former spouse of a U.S. citizen because she did not file her VAWA petition within two years of her divorce.

On appeal, the Petitioner accurately states that in July 2018, the Director approved the first VAWA petition that she filed in February 2017, naming R-R- as her abuser. The record reflects that the

[1] Initials are used throughout this decision to protect the identity of the individual.

Petitioner also filed a concurrent Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). In February 2020, her adjustment application, based on her first VAWA petition, was denied as a result of abandonment because she did not appear for her adjustment of status interview at the Tampa Field Office. The Petitioner did not file a motion to reopen or a motion to reconsider her denied adjustment application, nor has she filed a new one based on the first VAWA petition.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight sister circuits in holding that appellate adjudicators may adopt and affirm a decision below as long as they give "individualized consideration" to the case). The language of section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act states that to remain eligible for immigrant classification despite the termination of a marriage to a U.S. citizen spouse, a petitioner must have been the bona fide spouse of a U.S. citizen "within the past 2 years." Further, contrary to the Petitioner's assertions, her prior VAWA petition is a separate proceeding that has no bearing on the current VAWA petition.[2] The Petitioner divorced R-R- in [redacted] 2017, and filed her current VAWA petition in March 2020, nearly three years later. Therefore, her current VAWA petition must be denied. The Act does not contain any 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 we 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) (noting that 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 a statute authorizes an exercise of discretion, a determination of eligibility is not discretionary).

The Petitioner's divorce occurred more than two years before she filed her current VAWA petition. Accordingly, the Petitioner cannot establish a qualifying relationship with her former U.S. citizen spouse or her eligibility for immediate relative classification based on that relationship, as required. Sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The petition will therefore remain denied.[3]

**ORDER:** The appeal is dismissed.

[2] The Petitioner also makes certain arguments pertaining to her prior VAWA petition and proper notice of her adjustment interview. These arguments are neither pertinent nor availing, because, as noted, the current VAWA petition is a separate proceeding.

[3] As the Director made no further findings in the decision, we do not address whether the Petitioner has established the remaining eligibility requirements for relief under the VAWA provisions.