U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29356528

Date: DECEMBER 6, 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 a qualifying marital relationship and his corresponding eligibility for immigrant classification under VAWA. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence. 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 remand to the Director for the issuance of a new decision.

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. 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 (AAO 2010).

In April 2020, the Petitioner filed a VAWA petition. In March 2022, through a request for evidence (RFE), the Director informed the Petitioner that he did not submit evidence to establish that his former spouse is a U.S. citizen, as required. In response to the RFE, the Petitioner submitted his divorce records. The Director noted that the submitted evidence did not provide information relating to the immigration status or U.S. citizenship of his former spouse. The Director further noted that a records search of government systems did not provide any results regarding the former spouse's immigration status.[1] Because the Petitioner did not provide evidence of his former spouse's U.S. citizenship, the Director concluded that he did not establish a qualifying relationship with a U.S. citizen, or that he is eligible for immigrant classification based on that qualifying relationship.

[1] 8 C.F.R. § 103.2(b)(17)(ii) provides that if a self-petitioner is unable to present primary or secondary evidence of the abuser's status, USCIS must attempt to electronically verify the abuser's status from information in automated or computerized records or other Department of Homeland Security records, in the officer's discretion.

With his appeal, the Applicant submits a copy of his former spouse's U.S. birth certificate which is primary evidence of her U.S. citizenship. Because the sole ground for denial of the VAWA petition has been overcome on appeal, we will remand the matter to the Director to redetermine whether the Petitioner is otherwise eligible for immigrant classification under VAWA.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for the issuance of a new decision consistent with the foregoing analysis.