U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24911434

Date: MAR. 2, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an abused spouse of a lawful permanent resident (LPR). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident (VAWA petition), concluding that Petitioner did not establish he had a qualifying relationship as the spouse of an LPR or was eligible for immigrant classification under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A). 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.

A petitioner who is the spouse of an LPR may self-petition for immigrant classification if the petitioner demonstrates that they entered into marriage with the LPR spouse in good faith, during the marriage the petitioner was battered or subjected to extreme cruelty perpetrated by their LPR spouse, they are eligible for immigrant classification under section 203(a)(2)(A) of the Act as the spouse of an LPR, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(B)(ii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). A petitioner who is the former spouse of an LPR may still file a petition under VAWA if they demonstrate that their marriage to the LPR spouse was legally terminated within the past two years and that the termination was connected to battery or extreme cruelty by the LPR spouse. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

The Petitioner entered the United States without inspection in 1990. He married an LPR, M-G-R-,[1] in 1992. In April 2020, the Petitioner filed the instant VAWA petition based on his prior marriage to M-G-R-, claiming that she engaged in abusive behavior. The Petitioner asserted that he divorced M-G-R- on [redacted] 2018, within two years of filing his VAWA petition. However, he submitted a Texas divorce decree reflecting that his divorce to M-G-R- was pronounced and rendered on [redacted] 2017, more than two years prior to filing his VAWA petition. The Director determined that the

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

Petitioner did not have a qualifying relationship within two years of filing his VAWA petition. Furthermore, the Director concluded that since the Petitioner did not have a qualifying relationship, he was ineligible for immigrant classification under section 203(a)(2)(A) of the Act.

On appeal, the Petitioner submits a brief, his divorce decree, a case from the Court of Appeals of Texas (the court), and his 2021 tax records. Based on a de novo review of the record, we adopt and affirm the Director's decision that the Petitioner did not have a qualifying relationship as the former spouse of an LPR, as his VAWA petition was not filed within two years of the date of his divorce, and he was ineligible for immigrant classification under section 203(a)(2)(A) of the Act. *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 circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough analysis of whether the Petitioner had a qualifying relationship as the former spouse of an LPR and whether he was eligible for immigrant classification under section 203(a)(2)(A) of the Act.

On appeal, the Petitioner states that although his divorce decree reflects that his divorce was pronounced and rendered on [redacted] 2017, it was not signed until [redacted] 2018, which is within two years of the date he filed his VAWA petition. He asserts that the date the divorce decree was signed is the official date of divorce. In support of his claim, the Petitioner cites *McShane v. McShane*, 556 S.W. 436 (Tex. App. – Houston [1st Dist.] 2018, pet. denied), in which the court stated a "judgment is rendered when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly . . . [and] when there is a question concerning the date judgment was rendered, the date the judgment was signed prevails over a conflicting docket sheet entry." *Id.* at 441-442 (citing *Garza v. Tex. Alcoholic Beverage Comm'n*, 89 S.W.3d 1, 6-7 (Tex. 2002)). Furthermore, the court noted "to be an official judgment, the trial court's oral pronouncement must indicate an intent to render a full, final, and complete judgment at that point in time" and a trial court's pronouncement does not constitute "a rendition of judgment if essential issues remain pending when the pronouncement is made." *Id.* at 442 (citing *Gamboa v. Gamboa*, 383 S.W.3d 263, 270-271 (Tex. App. – San Antonio 2012, no pet.)). In addition, the court stated that "a trial court's oral pronouncement does not constitute a rendition of judgment" in a situation where it "announces . . . an 'intention to render judgment in the future.'" *Id.* (citing *State v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015)). In this case, the Petitioner has not established there was a question concerning the date his divorce judgment was rendered, an essential issue pending at the time his divorce was pronounced and rendered, or that an intention to render judgment in the future was announced. Rather, the divorce decree provides "[t]his is a final judgment . . . [t]his judgment finally disposes of all claims." Therefore, the record reflects that the Petitioner was divorced on [redacted] 2017, when it was pronounced and rendered. Upon review of the evidence in the record, the Director correctly determined the Petitioner did not have a qualifying relationship as the former spouse of an LPR, as his VAWA petition was not filed within two years of the date of his divorce, and he was ineligible for immigrant classification under section 203(a)(2)(A) of the Act.

ORDER: The appeal is dismissed.