U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28859413

Date: NOV. 13, 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 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 (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(b)(2), (c)(2)(ii).

In August 2020, 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 evidence of the legal termination of his prior marriage to A-O-[1] to establish that he was free to marry B-B-, his U.S. citizen spouse. In response to the RFE, the Petitioner submitted, in part, a Decree Nisi of Dissolution of Marriage and a Certificate of Decree Absolute, in support of his assertion that his first marriage was legally terminated and he is thus eligible for the benefit sought.

The Director denied the petition. The Director noted that "the 'HD' on the [Certificate of Decree] Absolute appears small next to the 8 in the suit number and the 16 is inconsistent with information provided to USCIS [U.S. Citizenship and Immigration Services] from the U.S. Consulate General in [redacted]." The Director also determined that the signature and stamp purportedly from the assistant chief registrar were not authentic because they did not match the exemplars of the assistant chief

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

registrar on file with USCIS. The Director further stated that a search of the [redacted] State Judiciary website for the termination of the marriage between the Petitioner and A-O- 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.[2]

On appeal, the Petitioner asserts that his first marriage was legally terminated and he is thus eligible for the benefit sought. He maintains that "to the best of my knowledge and information given to me, they [the divorce documentation in the record] are authentic" and "[a]ccording to the attorney[3] in Nigeria, the public online search doesn't accommodate decided and concluded cases."

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 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 submitted documentation to 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.

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[2] The Director also determined that the Petitioner had not established joint residence and good faith marriage to his U.S. citizen spouse. 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 B-B-. *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).

[3] 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.