U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28567696

Date: NOV. 16, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner had a qualifying relationship with a U.S. citizen of the United States, and that the Petitioner was eligible for immigrant classification based on such a qualifying relationship. 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.

I. LAW

A petitioner who is the spouse of a U.S. citizen of the United States may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen in good faith and were battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must submit evidence of the U.S. citizenship or the lawful permanent resident status of the petitioner's spouse. 8 C.F.R. § 204.2(c)(2)(ii).

U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the determination of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

I. ANALYSIS

In order to establish that she is eligible for immigrant classification based on a VAWA petition, the Petitioner must first show that she had a qualifying marital relationship with a U.S. citizen spouse, as she claims. Marriage certificate evidence shows that the Petitioner and N-L-P-[1] married in Texas in 2014 and divorced in [redacted] 2019. On her VAWA petition filed in January 2019, the Petitioner claimed that N-L-P- was a U.S. citizen but checked every box pertaining to establishing a spouse's U.S. citizen status, including: (1) born in the United States; (2) born abroad to U.S. citizen parents; and (3) U.S. citizen through naturalization. The Petitioner explained in handwritten notes that she "was told so many different stories [that she was] not sure" how her former spouse became a U.S. citizen and that he "might be Jamaican born." In her personal statement, the Petitioner claimed that she and her former spouse initially resided in Texas where she knew him as N-L-P- with a 1963 date of birth, but that they moved to Jamaica after her spouse obtained documentation under the name N-M- with a 1957 date of birth.

The Petitioner's documentation regarding her husband's claimed U.S. citizen status and identity includes: (1) at least three different Texas driver's licenses issued between 2012 and 2015 reflecting that his name was N-L-P- and that he was born in [redacted] 1963; (2) two U.S. military Certificates of Release or Discharge from Active Duty for an individual named N-L-P- with a date of birth in [redacted] 1963 to show that he was in the U.S. army reserves and completed a total period or approximately six months in active service in 1991 and 1992; (3) a Texas Certificate of death from May 2021 listing N-L-P-'s birthplace as [redacted] Maryland; (4) a 2016 letter from the State of Wisconsin advising that it could not issue a birth certificate for N-L-P-;[2] (5) a social security card for N-L-P-; (6) a 2016 Texas voter registration card for N-L-P-; (7) an undated Texas offender card for N-L-P-; and (8) a 1993 Internal Revenue Service (IRS) Form W-2 reflecting that N-L-P- was born in [redacted] 1993 and received wages for military service in that year. However, the Petitioner also submitted Jamaican documentation that showed that her former spouse was named N-M-, and that he was born in Jamaica in [redacted] 1957. The Jamaican documents consist of a birth registration issued in 2017, a 2017 emergency certificate, a 2008 elector registration card, a 2017 driver's license, and a 2018 passport. She contends that her former spouse told her that he was a confidential informant for the U.S. Drug Enforcement Agency and was promised U.S. citizenship for himself and the Petitioner in return, but the Petitioner also stated that she was not aware of the results of the claimed agreement.

The Director denied the VAWA petition after concluding that the Petitioner had not shown that she was married to a U.S. citizen, as claimed. Moreover, the Director advised the Petitioner that USCIS did not have records for an individual named N-L-P- and that it appeared that the Petitioner's spouse had assumed that identity. Instead, the Director explained that USCIS records show that an individual named N-M- had been granted status as a conditional permanent resident of the United States in 1987 but that his conditional status was terminated in 1989 and he never adjusted his status to that of a lawful permanent resident. The Director therefore advised the Petitioner that she also had not shown that she was married to a lawful permanent resident of the United States for purposes of establishing

[1] Names withheld to protect the individuals' identities.

[2] The Petitioner's administrative record includes a 2016 Form I-130, Petition for Alien Relative, and a related Form G-325A, Biographic Information, both of which were signed by N-L-P- and on which he listed his place of birth as [redacted] Wisconsin.

VAWA eligibility under section 204(a)(1)(B)(ii) of the Act as the abused spouse of a lawful permanent resident.

On appeal, the Petitioner, citing 8 C.F.R. § 103.2(b)(17)(ii), claims that USCIS has an obligation to electronically verify her former spouse's citizenship status. However, the Petitioner herself provided evidence that she claims establishes her former spouse's identity. These documents do not refer to or list her former spouse's citizenship status. Moreover, as discussed in the Director's decision, the evidence that the Petitioner provided is contradictory with respect to her former spouse's actual identity. Consistent with 8 C.F.R. § 103.2(b)(17)(ii), USCIS attempted, but was unable, to verify citizenship information for N-L-P- based on the Petitioner's evidence. Moreover, to the extent that the Petitioner's evidence alternatively indicates that her former spouse may have been N-M-, USCIS records indicate that an individual named N-M- lost his conditional resident status and was neither a U.S. citizen nor a lawful permanent resident of the United States. Although the Applicant cites to the Texas offender identification card and her former spouse's U.S. military records for N-L-P-'s identity, neither of these sources reference his citizenship status and they do not overcome the Petitioner's evidence indicating that her former spouse also used the identity of N-M-.

On appeal, the Petitioner also contends that USCIS has no basis for assuming that her former spouse's identity was N-M- rather than N-L-P-, and that she herself does not know his true identity. She further asserts that because her former spouse's identity is not established, any ambiguity must be resolved in her favor and therefore she has shown by a preponderance of the evidence that her former spouse was a citizen of the United States. As stated, the burden of proof is on the Petitioner in these proceedings to demonstrate eligibility for the requested classification by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe,* 25 I&N Dec. at 375. In this case, the Petitioner has not met that burden where the record contains contradictory evidence as to her spouse's identity, and consequently, she has not shown that her former spouse is or was a U.S. citizen or lawful permanent resident of the United States.

The Petitioner did not include additional evidence on appeal to support her claim that her former spouse was a U.S. citizen. As a consequence, the Petitioner has not met her 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 and, in the alternate, has not shown that she was married to a lawful permanent resident of the United States for purposes of meeting section 204(a)(1)(B)(ii) of the Act. Because the Petitioner did not demonstrate that she had a qualifying marital relationship with her former spouse, she also has not established that she is eligible for immediate relative classification based on such a relationship. The petition will therefore remain denied.

ORDER: The appeal is dismissed.