U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28163593

Date: OCT. 24, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks immigrant classification as an abused child of a lawful permanent resident (LPR) of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(iii), 8 U.S.C. § 1154(a)(1)(B)(iii). Under the Violence Against Women Act (VAWA), an abused child 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 Petitioner did not establish a direct correlation between the claimed abuse and the filing of the current petition after he reached 21 years of age. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner provides additional evidence related to the claimed abuse and asserts that the abuse is one central reason for his inability to file the VAWA petition prior to reaching the age of 21.

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 child of a lawful permanent resident may self-petition for immigrant classification if the petitioner demonstrates, in part, that they were subjected to battery or extreme cruelty, resided with the abusive parent and are a person of good moral character. Section 204(a)(l)(B)(iii) of the Act. In 2005, Congress amended the self-petitioning provisions for abused children to extend eligibility to individuals who did not file their VAWA petition before turning 21 years of age due to the abuse. Accordingly, section 204(a)(1)(D)(v) of the Act now provides that an individual who did not file a petition under section 204(a)(1)(B)(iii) as a self-petitioning child before turning 21 years of age shall be treated as if the petition was filed before his or her 21st birthday, if he or she: (1) files the petition before attaining 25 years of age; (2) had been qualified to file the petition as of the day before his or her 21st birthday, and (3) shows that the abuse was at least one central reason for the delay in filing.

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

II. ANALYSIS

The Petitioner, a citizen and national of Mexico, entered to the United States without inspection in 2011. He is the biological son of R-C-G-, a lawful permanent resident. In July 2020, the Petitioner filed the current VAWA petition as the abused child of an LPR at the age of 24. In his personal statement to the Director, the Petitioner described how his father always treated him differently than his siblings because he looked like his mother. He stated that his father would accuse him of not being his son and call him unkind names, especially when he was drinking. The Petitioner further described an instance of violence that he witnessed between his mother and father shortly before his mother left for the United States.

The Director requested additional evidence that the alleged abuse carried out by the Petitioner's father was a central reason for the Petitioner's delay in filing his VAWA petition. The Petitioner responded by providing an additional personal statement related to the alleged abuse. In his statement in response to the Director's request, the Petitioner stated that he was sexually abused by a cousin at a young age causing him to become withdrawn and depressed. He stated that his father was always coming and going from the United States and at the age of 16 he told his father he wanted to move to the United States to be with his mother. In response, his father stated that he would never help him or his mother get status in the United States because they did not deserve it. The Petitioner entered the United States without inspection in 2011 at the age of 16. The Petitioner stated that his father moved in with him and his aunt when he was 19 years old and that his father would not speak to him. The Petitioner explained that he requested his father's help with getting his immigration paperwork filed but that his father refused to become a U.S. citizen because it might help the Petitioner or his mother. The Director determined that the evidence was not sufficient to show that the delay in filing the VAWA petition was related to the alleged abuse suffered by the Petitioner and denied the petition for that reason.

On appeal, the Petitioner states that his father has abused him his entire life and that the abuse he suffered worsened as he neared the age of 21 and his father found out that he was gay. The Petitioner re-iterates claims made in his prior statements regarding his father's reluctance to petition for him and his brothers. In support of his appeal the Petitioner provided additional evidence related to the abuse including affidavits from friends and family regarding the Petitioner's relationship with his father and non-precedent decisions from the AAO regarding eligibility to file a VAWA petition after reaching 21 years of age under section 204(a)(1)(D)(v) of the Act. These non-precedent decisions were decided based on the specific facts and evidence of each case. The decisions were not published as precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

Upon de novo review, we acknowledge the Petitioner's claims of abuse and sympathize with the difficult circumstances he has faced in his life. However, the Petitioner has not demonstrated that his failure to file the current VAWA petition prior to reaching the age of 21 was due, in central part, to the claimed abuse. The Petitioner describes how his father was reluctant to file a petition on his behalf.

However, service records show that the Petitioner's father filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf in December 2015, and the petition was approved in June 2016, when the Petitioner was 20 years of age. The record does not show that the Petitioner pursued lawful permanent resident status based on the approved I-130 petition.

The Petitioner filed the current VAWA petition in 2020, approximately two weeks prior to reaching the age of 25. We acknowledge the Petitioner's claim that his father engaged in abusive behavior toward him and was reluctant to fully assist the Petitioner in obtaining lawful permanent resident status. However, the Petitioner does not articulate how his father's abuse was a central reason that he did not file the instant petition before he turned 21. The additional evidence filed on appeal provides details related to the alleged abuse by the Petitioner's father but it does not connect the abuse to the Petitioner's delay in filing. This lack of connection is the basis for the Director's denial, and absent an explanation from the Petitioner, we are unable to conclude that the alleged abuse by his father was a central reason that the Petitioner filed his VAWA petition after he reached the age of 21. *See Matter of Chawathe*, 25 I&N Dec. at 375.

Because the applicant has not established that the alleged abuse was a central cause of his failure to file the VAWA petition prior to reaching the age of 21 as required under section 204(a)(1)(D)(v) of the Act, he has not demonstrated eligibility under section 204(a)(1)(B)(iii) of the Act. The petition will remain denied.

ORDER: The appeal is dismissed.