U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28336388

Date: OCT. 30, 2023

Motion on Administrative Appeals Office 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. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative 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 qualifying relationship with a U.S. citizen, as required. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Director denied the VAWA petition because the Petitioner had not established the termination of his marriage to B-C-K-[1] in Nigeria prior to his marriage to the alleged abuser. The Director specifically cited an overseas verification by the U.S. Department of State which determined that the Decree Nisi and Divorce Absolute presented as evidence of termination of the Petitioner's prior marriage were not authentic. On appeal, we determined that the overseas verification performed by the Department of State where the High Court of [redacted] State indicated that the Decree Nisi and Divorce Absolute were not issued by the High Court was not overcome by the supplemental evidence provided on appeal.

[1] We use initials to protect the privacy of individuals.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on evidence provided on appeal and chapter 6 section 202 of Texas Family Code Annotated. The Texas statute states that a marriage is void if entered while either party remains married to another but may become valid upon the termination of the prior marriage if certain conditions are met. In the current case, the Petitioner has not established that his prior marriage was terminated, therefore the statute does not apply to the Petitioner.

The Petitioner continues to assert that his divorce documents are true and correct and that he divorced his spouse in [redacted] 2016. The Petitioner specifically cites the printout from the High Court of [redacted] State Judiciary website showing that his divorce was filed with the court. However, there is no indication on the printout from the [redacted] State Judiciary website of a final decision in the case. In addition, a review of the Petitioner's records indicates that on his Form DS-160: Online Non-immigrant Visa Application submitted to the Department of State in July 2016, months after his claimed divorce, the Petitioner claimed to still be married to and living with B-C-K-. This information along with the overseas verification by the Department of State casts doubt on the Petitioner's claim that he divorced B-C-K- in [redacted] 2016. Based on the foregoing, the Petitioner has not met his burden of proof to establish that his prior marriage to B-C-K- was terminated and therefore has not established that his marriage to a U.S. citizen is valid for immigration purposes. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.