U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28105622

Date: SEP. 28, 2023

Motion on Administrative Appeals Office Decision

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

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 VAWA petition, and we dismissed the Petitioner's subsequent appeal, concluding that the record did not establish that the Petitioner has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based on such qualifying relationship. The matter is now before us on a motion to reopen. 8 C.F.R. § 103.5. On motion, the Petitioner submits a statement and additional evidence. Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates that they entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the petitioner or their child was battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1). In addition, a petitioner must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1). Specifically, a petitioner must submit evidence of the marital 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). Further, a petitioner's remarriage precludes the approval of a VAWA self-petition. 8 CFR § 204.2(c)(1)(ii). The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). While we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole

discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner filed her VAWA petition in November 2019 based on a claim of abuse by her U.S. citizen spouse, A-G-.[1] In a statement from the Petitioner, she referred to A-G- as her "intended spouse"[2] and reiterated that they had a customary marriage involving a "verbal agreement" but that "it was not a legal civil marriage" because A-G- was in the process of filing a K-1 visa application for her to come to the United States as his fiancée. Based on these representations, the Director denied the VAWA petition concluding that the Petitioner did not meet her burden of showing a qualifying relationship with a U.S. citizen spouse, as required, and corresponding eligibility for immigrant classification. On appeal, we adopted and affirmed the Director's decision and noted that the Petitioner did not allege or provide any evidence on appeal showing that the reasons for the denial were incorrect.

On motion to reopen, the Petitioner submits a statement indicating that she and A-G- had a customary, religious marriage celebration in Morocco in January 2007, but the marriage was not registered with local civil authorities because they "planned to get legally married in the United States" once she joined him. She recounts that they then went through hardship and faced difficult circumstances while living together and A-G- "refused to register the marriage . . . unless [she] complied with the hardship he put [her] through and [was] willing to put [her] through in the future." She indicates that she was unable to continue living with A-G- and eventually left him for her own safety. The Petitioner then states that, with the help of family members and by according them a power of attorney, she was able to obtain a civil marriage contract from the Department of Family Justice in Morocco for herself and A-G- to properly support her VAWA petition. She further states that, because she and A-G- dissolved their customary, religious marriage in 2013 by agreement, she was also able to obtain a divorce certificate for that civil marriage contract. The Petitioner submits copies and translations of a marriage contract for herself and A-G-, dated [redacted] 2022, and a divorce certificate ending that marriage contract, dated [redacted], 2022.

Here, the record, including the new evidence and new facts asserted on motion, is not sufficient to establish that the Petitioner has a qualifying spousal relationship with an abusive U.S. citizen as required. Section 204(a)(1)(A)(iii)(II)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(i). The Petitioner concedes in her statement that she and A-G- were not legally or civilly married at the time of filing the VAWA petition. The Petitioner filed the VAWA petition in November 2019 and the civil marriage contract between the Petitioner and A-G- was obtained in [redacted] 2022. The regulations at 8 C.F.R. § 204.2(c)(1)(ii) states, in part, that the self-petitioner must be legally married to the abuser when the VAWA petition is properly filed with USCIS. Accordingly, the Petitioner has not established the requisite qualifying spousal relationship with A-G- and is ineligible as the self-petitioning spouse of a U.S. citizen, on this basis alone.

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[1] We use initials to protect identities.

[2] Although a VAWA self-petitioner may include an intended spouse in certain circumstances, the term "intended spouse" in this context is defined at section 101(a)(50) of the Act as a person who believed they legally married a U.S. citizen or LPR, a marriage ceremony was actually performed, and the requirements for establishment of a bona fide marriage were otherwise met, but the sole reason for the marriage not being legitimate was the bigamy of the U.S. citizen or LPR. Sections 204(a)(1)(A)(iii)(II)(aa)(BB) and (a)(1)(B)(ii)(II)(aa)(BB) of the Act. "Intended spouse" for purposes of a VAWA petition does not include the fiancée of a U.S. citizen or LPR, which the Petitioner claims was her relationship with A-G-.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the new evidence does not overcome our prior decision, concluding that she was not legally married to her abuser, A-G-, at the time of filing the VAWA petition. Accordingly, the Petitioner has not established a qualifying relationship with a U.S. citizen spouse and her corresponding eligibility for immediate relative classification based on that relationship. Sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

ORDER: The motion to reopen is dismissed.