U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-T-P-

DATE: JAN. 11, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Vietnam, entered the United States on January 29, 2004, as a K-1 nonimmigrant fiancée. The Petitioner married N-T-[1], a U.S. citizen, on 2004, in Massachusetts. The Petitioner and N-T- were divorced on , 2006. The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 29, 2014. The Director found the record insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed. On appeal, the Petitioner submits a letter and a copy of her daughter's birth certificate.

III. ANALYSIS

We review these proceedings *de novo*. Upon review of the entire record, the Petitioner's claims do not overcome the grounds for denial. The appeal will be dismissed for the following reasons.

A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director denied the Form I-360, as the record did not establish that the Petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The Form I-360 was filed more than eight years after the Petitioner and N-T- were divorced. The Petitioner consequently lacks a qualifying relationship with N-T- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The Petitioner asserts on appeal that she married her spouse with good intentions, she was subject to "cruel treatment and emotional abuse" and, that her spouse abandoned her. The Petitioner also indicates that she has been unable to work and to support herself and her daughter. The Petitioner has submitted no further evidence into the record.

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act prescribes that a Form I-360 must be filed no longer than two years after the legal termination of the marriage. The Petitioner's Form I-360 was received by the Vermont Service Center on December 29, 2014, more than eight years after the termination of her marriage to N-T- on 2006. The Petitioner consequently had no qualifying relationship with N-T- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section

[1] Name withheld to protect the individual's identity.

204(a)(1)(A)(iii)(II)(cc) of the Act. We lack the authority to waive the statutory deadline of the two-year, post-termination filing period requirement of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act..

IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-T-P-*, ID# 15224 (AAO Jan. 11, 2016)