U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-C-Z-

DATE: JUNE 20, 2018

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 former spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that the Petitioner did not establish that she is a person of good moral character because of "a continuing pattern of providing false information in connection to [her] attempts to obtain immigration benefits." The matter is now before us on appeal. The Petitioner submits a brief, which she asserts demonstrates her good moral character, as well as Freedom of Information Act (FOIA) results, photographs, and an FBI criminal history record. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner may self-petition for immigrant classification under VAWA if that individual demonstrates, among other requirements, his or her good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act. Primary evidence of a VAWA petitioner's good moral character is the petitioner's affidavit, which should be accompanied by a local police clearance or state-issued criminal background checks from every location in which the petitioner resided for six or more months during the three years preceding the filing of the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v). If such clearances or checks are not available, the petitioner may include an explanation and submit the evidence with his or her affidavit. *Id.*

A petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Although a petitioner may submit any evidence for us to consider, we determine, in our sole discretion, the credibility of and the weight to give the evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

VAWA petitioners will be found to lack good moral character if they are within the classes of persons described in section 101(f) of the Act, 8 U.S.C. § 1101(f). 8 C.F.R. § 204.2(c)(1)(vii).

Section 101(f) of the Act lists classes of persons who shall not be regarded as having good moral character if they committed certain acts "during the period for which good moral character is required to be established." USCIS generally focuses on the three years preceding filing as the time period during which a VAWA petitioner must establish his or her good moral character because the regulation specifies a three-year period prior to filing for which petitioners should submit police clearances or criminal background checks to establish their good moral character. *See* 8 C.F.R. § 204.2(c)(2)(v) (stating this evidentiary standard). However, USCIS may investigate a petitioner's character beyond that three-year period when there is reason to believe the petitioner has not been a person of good moral character in the past. *See* USCIS Policy Memorandum, HQOPRD 70/8.1/8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions, 1-2* (Jan. 19, 2005), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (explaining that while the inquiry into good moral character focuses on the three years preceding filing, USCIS may extend the inquiry when warranted); *see also Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996) (explaining that adjudicating officers may investigate a petitioner's character beyond the three-year period when there is reason to believe the petitioner lacked good moral character in the past). USCIS evaluates a petitioner's claim of good moral character on a case-by-case basis, considering the provisions of section 101(f) of the Act and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii).

Here, the record reflects that Petitioner was apprehended for entering the United States without inspection on four occasions,[1] provided three different dates of birth in connection with immigration encounters, and has two criminal records with the , Arizona Police Department that she does not address.[2] Additionally, the FBI criminal history record submitted by the Petitioner reflects one arrest where she was charged with violating 8 U.S.C. § 1325 ("Improper entry by alien") in connection with her entry in 2009; however, the charge was later dismissed.[3] These events all appear to predate the Petitioner's 2016 VAWA petition by more than three years.

On appeal, the Petitioner states that she has "no criminal record" and that the charges against her were dismissed in Federal Court. She explains that she entered the United States on two occasions, in 1989 and 2009, both times without inspection.[4] Additionally, she argues on appeal that the three 1996 apprehensions for unlawful entry in her name relate to a different woman. However, her sworn statement from the 2009 detention reflects that the Petitioner testified to having been apprehended by Border Patrol about four times since 1996. On appeal, the Petitioner states that she "cannot affirm or

[1] The record reflects three apprehensions in 1996 and one in 2009. The Petitioner disputes the three 1996 apprehensions.

[2] With her VAWA petition, the Petitioner submitted a local records check from the , Arizona Police Department dated March 1, 2016 showing two records matching the Petitioner's name and date of birth: . However, she has not provided official dispositions of these records, and she denies having a criminal record in her statement. The Director did not address this issue below.

[3] The record of the Petitioner's 2009 apprehension and unauthorized entry to the United States contains several inconsistencies between the Petitioner's statements and Customs and Border Protection records. However, because the Petitioner does not dispute making an unauthorized entry to the United States in 2009, we decline to discuss the discrepancies here.

[4] She states that a discrepancy in these dates in her RFE response was due to "misunderstanding and not any attempt to misrepresent."

dispute" the declaration signed in 2009 during her detention, because she is unaware of its contents. She further relates that "I would have signed whatever paper they handed me without regard to what it said, but that does not make what was written on it the truth."

The Petitioner further claims that the photographs of the individual from the 1996 apprehensions do not relate to her, and she submits various photographs of herself with captions of the approximate time periods when the photographs were taken to demonstrate her claim. The Petitioner previously addressed the 1996 apprehension photographs in her request for evidence (RFE) response, stating that they "look a lot like me but [it] was not me." However, US-VISIT records indicate that the 1996 and 2009 apprehensions in the Petitioner's name are all associated with the same fingerprint identification number (FIN).[5] The evidence the Petitioner submits on appeal does not overcome the the photographic evidence, the FIN records associated with her name, and her own 2009 sworn statement regarding the previous apprehensions.[6] Additionally, both the VAWA petition and Form I-485, Application to Adjust Status, reflect that the Petitioner's last entry to the United States was in 1989, and on Form I-485, she answered "no" to questions relating to her arrest and deportation/removal history. Because the Petitioner has not provided credible testimony regarding her apprehension history in the United States, she has not established her good moral character.

The record also reflects that the Petitioner has used several dates of birth over the years. Although it appears her actual date of birth is , 1973, she has also used the dates , 1973 (in her 2009 sworn statement) and , 1974 (in the 1996 apprehension records, and on the birth certificates of all six of the Petitioner's U.S. citizen children).[7] The Petitioner contends that the discrepancies related to her date of birth are due to birth certificates that were issued at different times bearing different dates. The Petitioner further urges that the different dates are "not an intentional misrepresentation of any fact . . . and the discrepancy was immaterial to . . . eligibility" for an immigration benefit. The Petitioner's explanation regarding the multiple dates of birth is not credible. The birth certificates for the Petitioner issued in 1999 and 2004 both reflect her claimed date of birth of , 1973. Further, the Petitioner's explanation does not address why her date of birth is listed as , 1974 on all of her children's birth certificates, and her statements do not address her use of the , 1973 date of birth in her 2009 sworn statement. The Petitioner's use of different dates of birth has not been resolved by her statements. Additionally, the local police clearances submitted are not sufficient as they do not cover all of the Petitioner's claimed dates of birth. The Petitioner has therefore not provided credible explanations of her multiple dates of birth to demonstrate by a preponderance of the evidence that she is a person of

[5] No actual evidence of fingerprints from the 1996 detentions could be located due to technological changes. However, because the same FIN number is associated with each apprehension record, it is presumed that fingerprints were captured.

[6] The Petitioner's additional claims on appeal – that the woman looked like someone she worked with who would have known the Petitioner's name but not her date of birth, and that the Petitioner was approximately three months pregnant at the time of the 1996 apprehensions and "not in any condition to be crossing [the border] repeatedly without inspection" – do not alter our decision.

[7] The Director's decision lists , 1974 as a third alternative date of birth, but a review of the record does not reflect that this date was ever used by the Petitioner.

good moral character. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that she is a person of good moral character as section 204(a)(1)(A)(iii) of the Act and 8 C.F.R. § 204.2(c)(1)(vii) require.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-Z-*, ID# 01147345 (AAO June 20, 2018)