U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8053263

Date: JUN. 10, 2021

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner, a citizen of Kenya, seeks immigrant classification as an abused 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 (the Director) revoked approval of the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that she had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship. In decisions that we incorporate by reference, we dismissed the Petitioner's appeal and three subsequent motions. The matter is now before us on a fourth motion to reopen. The Petitioner submits additional evidence reasserting her eligibility for VAWA classification.

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 (AAO 2010). Upon review of the record, we will dismiss the motion, and the petition will remain denied.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A petitioner who is or was the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, among other requirements, that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. Section 204(a)(1)(A)(iii)(II)(aa), (cc) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(B). 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 to give such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Pursuant to section 205 of the Act, 8 U.S.C. § 1155, the Director may revoke the approval of any petition approved under section 204 of the Act, "at any time, for what [they] deem[] to be good and sufficient cause." The regulations provide for both automatic revocation

and revocation upon notice to the petitioner "when the necessity for the revocation comes to the attention" of the Director. 8 C.F.R. §§ 205.1, 205.2.

II. ANALYSIS

In connection with her VAWA petition, the Petitioner submitted evidence that she married her first spouse, G-M-O-, in Kenya and divorced him in 1997. Thereafter, she married H-F- in the United States in [redacted] 1999, and she submitted a death certificate showing that H-F- died in May 2001. As evidence of her qualifying relationship for purposes of VAWA classification, the Petitioner submitted a marriage certificate showing that she married her U.S. citizen spouse, J-A-, in [redacted] 2008. She also provided a divorce certificate reflecting that she divorced J-A- in [redacted] 2011, approximately two months before she filed her VAWA petition.

The Director revoked approval of the VAWA petition after concluding that the divorce certificate between the Petitioner and her first spouse, G-M-O-, was fraudulent. The Petitioner subsequently acknowledged that the divorce certificate was fraudulent, but she contended that she legally terminated her marriage to G-M-O- through a customary divorce in Kenya. In our decision on the second motion, we explained that, although USCIS recognizes customary divorces, the Petitioner provided insufficient evidence that she terminated her marriage to G-M-O- by a customary divorce under [redacted] tribal traditions. In our most recent decision, we determined that the Petitioner did not demonstrate that her otherwise bigamous marriage to J-A- became lawful upon G-M-O-'s death in January 2011 to establish a qualifying spousal relationship with J-A- under section 204(a)(1)(A)(iii)(II)(aa) of the Act. Specifically, we determined that because the Petitioner submitted only photographs of G-M-O-'s death certificate, those photographs were insufficient evidence of G-M-O-'s death. According to the U.S. Department of State Reciprocity Schedule for Kenya, available at https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Kenya.html, a person may obtain a photocopy of a death certificate through the Nairobi Civil Registration either by mailing a request or visiting a specific government website. In a request for evidence (RFE), we requested a photocopy of the death certificate issued directly by the Nairobi Civil Registration in Kenya in keeping with the Reciprocity Schedule. Although the Petitioner responded to other portions of our RFE, she did not submit the requested death certificate or otherwise address that portion of the RFE. Consequently, we determined that the Director had good and sufficient cause to revoke approval of the Petitioner's VAWA classification because the Petitioner did not establish a qualifying relationship with J-A-.[1]

On current motion, the Petitioner provides a photocopy of a death certificate for G-M-O-. This document appears to be the same death certificate in previously submitted photographs. The Petitioner states that she "is in possession of the original document that was sent from Africa" and asserts that "this last piece of evidence proves [her] eligibility for this benefit." However, the photocopy submitted on current motion does not appear to have been issued directly by the Nairobi Civil Registration in

[1] Since the identified basis for denial is dispositive of the Petitioner's current motion, we decline to reach and hereby reserve the Petitioner's prior arguments regarding the her joint residence with J-A- during the marriage and whether she was subjected to battery or extreme cruelty by him. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Kenya as requested in our prior RFE, and the Petitioner does not address the Department of State's Reciprocity Schedule requirements. Because the Petitioner has not complied with our request or provided an explanation of why she was unable to do so, the record contains insufficient evidence of G-M-O-'s death in January 2011. The Petitioner therefore has not demonstrated that her bigamous marriage to J-A- was a qualifying relationship for purposes of VAWA classification.

III. CONCLUSION

The Petitioner is ineligible for VAWA classification because she has not established that she had a qualifying relationship with her U.S. citizen spouse and was eligible for immigrant classification based upon that relationship as required by sections as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

ORDER: The motion to reopen is dismissed.