U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8442703

Date: MAR. 25, 2021

Appeal of Vermont Service Center 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, R-H-,[1] under the Violence Against Women Act (VAWA) provisions codified 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 initially approved the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and subsequently revoked approval twice, upon notice. The Petitioner filed a motion to reopen and reconsider to the initial revocation and it was subsequently dismissed by the Director. On appeal of the motion dismissal, the Petitioner submits a brief.

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). The AAO reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). USCIS must consider "any credible evidence" in a VAWA petition; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners 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)(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

[1] Initials are used throughout this decision to protect the identities of the individuals.

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

A. Facts and Procedural History

This matter has a complex procedural history and we summarize it here. The Petitioner entered the United States on a F-1 student visa in 2003. While in the United States, she maintained a relationship with a Kenyan national, E-C-N-, and together they had three U.S. citizen children. In June 2010, the Petitioner met R-H-, a U.S citizen. The Petitioner was placed into removal proceedings in [redacted] 2010 for remaining in the United States beyond the duration of her student visa. In [redacted] 2011, the Petitioner and married R-H-, a U.S. citizen. Later that year, R-H- filed a Form I-130, Petition for Alien Relative on the Petitioner's behalf that was denied. Based on her relationship with R-H-, the Petitioner filed an initial VAWA petition in 2012. The initial VAWA petition was denied in 2014 pursuant to section 204(g) of the Act for failure to establish by clear and convincing evidence that the Petitioner entered into her marriage to R-H- in good faith. In 2015 and 2017, the Petitioner had two additional children with E-C-N- in the United States.

The Petitioner subsequently submitted a second VAWA petition in 2015 based on her relationship with R-H- that was approved in 2016. In October 2018, the Director issued a notice of intent to revoke (NOIR) the approval of the VAWA petition addressed to the attorney who filed the 2015 VAWA petition. [redacted] The NOIR notified the Petitioner that USCIS "conducted an investigation into [her] claims that [she] married [R-H-] in good faith, resided with him, and [was] abused by him." The Director further notified the Petitioner:

> A USCIS investigation has also found that [E-C-N-] has engaged in a sham marriage with a U.S. citizen. His marriage occurred around the same time that [the Petitioner] married [R-H-]. [E-C-N-'s] spouse has admitted that she was paid $8,000 to help [E-C-N-] get lawful permanent resident status. This U.S. citizen stated that [the Petitioner] was a participant in this scheme to gain immigration benefits for [E-C-N-]. She stated that [the Petitioner] was present at the wedding and that [the Petitioner] refused to pay the last $4,000 as [the Petitioner] was angry that [E-C-N-] and the U.S. citizen consummated the marriage as [the Petitioner] claimed that was not part of the agreement.

The Director further noted several unexplained discrepancies in the record, including that the Petitioner had repeatedly claimed to be married to E-C-N-.[2] The Director determined that the evidence obtained by USCIS "casts significant doubt" on the Petitioner's claims. The Director found that the record did not establish that the Petitioner married R-H- in good faith by a preponderance of the evidence, and that consequently she did not establish by the higher clear and convincing evidence standard required by the bona fide marriage exemption to the restrictions of section 204(g) of the Act.

[2] The record does not include evidence of a lawful marriage between the Petitioner and E-C-N-.

The Director also notified the Petitioner that the credibility of her claim of battery and/or extreme cruelty by R-H- and her joint residence with him were also called into question.

The Petitioner retained a new attorney, [redacted] who submitted a response to the NOIR with a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, on January 17, 2019. However, the Director revoked approval of the VAWA petition on January 22, 2019, determining that the Petitioner did not respond to the NOIR. The January 2019 revocation notice was addressed to the original attorney, [redacted]

On June 18, 2019, the VAWA petition was reopened on service motion upon evidence that the NOIR response from the Petitioner was received. Following review of the evidence, the Director determined that the grounds for revocation were not overcome, and revoked approval of the VAWA petition a second time on June 21, 2019.[3] The second revocation was again addressed to attorney [redacted] although a Form G-28 from attorney [redacted] was attached to the NOIR response.

Meanwhile, in February 2019, the Petitioner filed a motion to reopen and reconsider the initial January revocation to the Director. The motion was accompanied by a Form G-28 for a third attorney [redacted] The motion was initially filed with no fee and was rejected in March 2019.[4] The Petitioner resubmitted the motion with a fee, and it was received in April 2019. In July 2019, the Director dismissed the motion as untimely and because the motion did not provide new facts or reasons for reconsideration. The Director stated that the reasons for the revocation were included in the June 2019 decision, and that there were no grounds for the motion to reopen and reconsider because the VAWA petition was already reopened and reevaluated on service motion. The July 2019 dismissal was properly addressed to the Petitioner's current attorney, [redacted]

The Petitioner now appeals to the AAO the Director's July 2019 dismissal of the motion to reopen and consider. On appeal, the Petitioner alleges that the Director's July 2019 decision improperly rejected her motion for untimeliness because it qualified for fee exemption. However, a rejected petition retains no filing date and may not be appealed. 8 C.F.R. § 103.2(a)(7)(i)-(iii). In this case, the motion was not initially submitted with the correct fee or fee waiver, so the Director's denial of the resubmitted motion as untimely was proper. *See* 8 C.F.R. § 103.2(a)(7)(ii)(C) (a benefit request will be rejected if not filed in compliance with the regulations governing the filing).

The Petitioner also alleges on appeal that she never received the second revocation issued in June 2019, and that she only learned of it when referenced by the July 2019 decision.[5] Because the instant appeal before us is of the Director's July 2019 dismissal of the Petitioner's motion as untimely, we do not reach the merits of the Director's June 2019 decision revoking the approval of the VAWA petition.

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[3] The Director's second revocation again determined that the Petitioner failed to establish that she entered into her marriage with R-H- in good faith by "the lesser standard of preponderance of the evidence" and therefore "did not meet the clear and convincing standard that is necessary due to the 204(g) restrictions" because the Petitioner married R-H- while in removal proceedings. The Director also found that the Petitioner did not establish that she was subject to battery and/or extreme cruelty by R-H- and that she resided with R-H- during the qualifying relationship.

[4] The Petitioner states that the motion was eligible for a fee waiver; however, she did not file a Form I-912, Request for Fee Waiver.

[5] In support of her contention, the Petitioner submits a copy of Form EOIR-33, Alien's Change of Address Form dated November 2018, reflecting a change of address from [redacted] to [redacted] USCIS systems reflect that she submitted a Form AR-11, Change of Address, to USCIS in December 2019 containing the same information.

III. CONCLUSION

The record contains a January 2019 initial revocation of the approved VAWA petition, determining that the Petitioner did not respond to the NOIR. The Petitioner submitted a motion to reopen and reconsider the January revocation in February 2019; however, the submission was rejected in March 2019 due to lack of a proper filing fee or fee waiver. A rejected petition has not been properly filed, retains no filing date, and may not be appealed. 8 C.F.R. § 103.2(a)(7)(i)-(iii). When the Petitioner filed a motion to reopen and reconsider with a filing fee in April 2019 it was outside of the 33-day appeal window. Upon full review of the record, we find that the Director's July 2019 dismissal of the Petitioner's April 2019 motion to reopen and reconsider for untimeliness was proper.

Although the Petitioner requests that we consider the merits of the Director's June 2019 revocation of her approved VAWA petition, that decision is not properly before us at this time.

ORDER: The appeal is dismissed.