



U.S. Citizenship
and Immigration
Services

(b)(6)



MAR 20 2013

DATE:

Office: CHICAGO, IL

FILE:

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(C)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(iii).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having reentered the United States without admission after being unlawfully present in the United States for an aggregate period of over one year. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii), on the grounds that she is a VAWA self-petitioner and there is a connection between the battery or extreme cruelty she suffered and her departure and unlawful reentry into the United States.

The Field Office Director concluded that the applicant failed to demonstrate eligibility for the waiver because the abuse which led to her departure and unlawful reentry was separate from the abuse upon which her VAWA self-petition was based. Accordingly, the Field Office Director denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated March 14, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding that the applicant did not qualify for a waiver of inadmissibility. Counsel contends that the applicant meets the requirements for a waiver under section 212(a)(9)(C)(iii) of the Act because she has an approved VAWA self-petition and because there is a link between abuse she suffered and her departure and unlawful reentry into the United States. Counsel acknowledges that the abuse upon which the applicant bases her waiver application was separate from and perpetrated by different individuals than the abuse upon which she based her VAWA self-petition. However, counsel claims that section 212(a)(9)(C)(iii) does not specify that a waiver under that section must be based upon the same abuse as the VAWA self-petition. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant; statements from the applicant's brother and friend; birth certificates for the applicant's children; police reports; notarized documents authorizing the applicant's daughter to travel without one or both of her parents; a letter from the Mexican Consulate; a copy of the applicant's Application for Assistance Under the Hague Convention on International Child Abduction; and a letter from a domestic violence service provider confirming the applicant's participation in its program. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

....

(iii) Waiver.-The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The record reflects that the applicant suffered physical and sexual abuse by her father in Mexico as a child. In December 1998, at the age of 15, she began living with her boyfriend, [REDACTED], who beat the applicant frequently. In June or July 1999, the applicant and Mr. [REDACTED] entered the United States without inspection. On April 3, 2000, their daughter, [REDACTED], was born in Chicago, Illinois. In January or February 2001, the applicant moved with [REDACTED] to a friend's house in Chicago to escape Mr. [REDACTED]'s abuse. In approximately March 2001, when [REDACTED] was 11 months old, the applicant agreed to allow Mr. [REDACTED] to take [REDACTED] to Mexico to meet Mr. [REDACTED] parents. Although Mr. [REDACTED] promised to return [REDACTED] to Chicago after one month, he later refused to do so. In June 2003, the applicant traveled to Mexico with the intent of bringing [REDACTED] back to Chicago. However, Mr. [REDACTED] and his brother-in-law beat the applicant to prevent her from taking [REDACTED]. Fearing additional abuse by Mr. [REDACTED] and by her father, who resided in the same town and had previously threatened her with death, the applicant returned to the United States without inspection. Upon her return, the applicant consulted the Chicago Police Department and the Mexican Consulate in unsuccessful attempts to return [REDACTED] to the United States. [REDACTED] remains in Mexico with Mr. [REDACTED] family and the applicant has not seen her since 2003.

The applicant met her current spouse, [REDACTED], in the summer of 2004 and the two were married on December 14, 2004. The applicant eventually filed a Form I-360 VAWA self-petition based on battery and extreme cruelty she suffered at the hands of Mr. [REDACTED]. That petition was approved on June 23, 2010. On March 14, 2011, the applicant filed a Form I-485 application to adjust status. During an interview regarding that application on August 15, 2011, the applicant disclosed her entries without inspection in 1999 and 2003 and stated that she had left the United States in 2003 in order to reunite with her daughter.

The applicant accrued over one year of unlawful presence from February 17, 2001, the date she turned 18, until she departed the United States in June 2003. See section 212(a)(9)(B)(iii)(I) of the Act. She subsequently reentered the United States without inspection in 2003, triggering the inadmissibility ground under section 212(a)(9)(C)(i)(I) of the Act. The applicant does not contest this finding on appeal.

Counsel contends that the applicant qualifies for a waiver of inadmissibility because there was a connection between abuse the applicant suffered and her departure and unlawful reentry into the United States. Counsel explains that Mr. [REDACTED] refusal to return [REDACTED] to the United States was an extension of his abusive behavior toward the applicant. As a result of Mr. [REDACTED] cruelty in separating the applicant from [REDACTED] the applicant was compelled to travel to Mexico in an attempt to reunite with her daughter. Additionally, counsel notes that the applicant's unlawful reentry into the United States was connected to the abuse she suffered. Counsel explains that after being beaten by Mr. [REDACTED] and his brother-in-law in Mexico, the applicant feared further abuse by Mr. [REDACTED] and also feared being discovered by her abusive father. As a result, she fled Mexico and returned to the United States in an effort to gain protection for herself and her daughter here.

Counsel alleges that the applicant is eligible for a waiver under section 212(a)(9)(C)(iii) of the Act because she meets both requirements: she is a VAWA self-petitioner and there is a connection between her battering or subjection to extreme cruelty and her departure and unlawful reentry into the United States. As noted above, counsel contends that the waiver does not require that the VAWA self-petition and the waiver application be based on the same instance of abuse or battery. *Counsel's Brief.*

In the alternative, counsel asserts that there is an indirect connection between the battery the applicant suffered at the hands of her spouse, [REDACTED] upon which her VAWA self-petition was based, and her departure and unlawful reentry. Counsel explains that women who experience physical or sexual violence as children are particularly vulnerable to future abuse as adults. Therefore, counsel contends that the abuse of the applicant by her father and Mr. [REDACTED] increased her risk for re-victimization, leading to her later abuse at the hands of Mr. [REDACTED]. Therefore, counsel concludes that "an indirect connection exists between Ms. [REDACTED] abusive relationship with Mr. [REDACTED] and the prior abuse leading to her departure and reentry in 2003."

The AAO acknowledges that the applicant has experienced numerous instances of physical, sexual, and emotional abuse and violence throughout her life. However, the AAO finds that the applicant has failed to meet her burden of demonstrating that she is eligible for a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act. Although counsel asserts that the Field Office Director erred in requiring a connection between the applicant's departure and reentry and the abuse upon which she had based her VAWA self-petition, such a connection is explicitly required in the instructions to Form I-601, which state:

USCIS has discretion to waive this ground of inadmissibility under INA section 212(a)(9)(C)(iii) for an approved VAWA self-petitioner . . . , if the VAWA self-petitioner can establish a "connection" between the battery or extreme cruelty *that is the basis for the VAWA claim*, the unlawful presence and departure, or the removal, or his or her subsequent unlawful entry or attempted reentry into the United States.

Form I-601 Instructions, page 9 (emphasis added).¹

Furthermore, the statute indicates that the waiver was intended only for VAWA self-petitioners whose inadmissibility under section 212(a)(9)(C) was the result of the abuse they had experienced. The Act's definition of a VAWA self-petitioner includes aliens who qualify for relief under several different sections of the Act. *See* section 101(a)(51) of the Act. However, a common element among those provisions addressing immigrant victims of violence is the qualifying alien's demonstration of a connection between his or her failure to meet the requirements for an immigration benefit and the domestic violence or battery he or she has experienced at the hands of his or her U.S. citizen or lawful permanent resident spouse, parent, son or daughter. *See, e.g.*, section 204(a)(1)(A)(iii) of the Act (allowing for classification as the spouse of a U.S. citizen of an alien whose qualifying marriage was not legitimate but who was subjected to extreme cruelty by the alien's spouse or intended spouse); section 204(a)(1)(A)(iv) of the Act (allowing for classification as an immediate relative of a child of a U.S. citizen if the child demonstrates that he or she was the victim of battery or extreme cruelty by his or her U.S. citizen parent); section 204(a)(1)(A)(vii) of the Act (allowing for classification as an immediate relative of an alien who is the parent of a U.S. citizen and who demonstrates that he or she has been the victim of battery or extreme cruelty by his or her U.S. citizen son or daughter); *see also* sections 204(a)(1)(B)(ii) and (iii) and 216(c)(4)(C) of the Act.

The definition of a VAWA self-petitioner therefore emphasizes the required connection between an alien's failure to meet requirements for a benefit and his or her battery at the hands of the U.S.

¹ 8 C.F.R. § 103.2(a)(1) provides:

Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

citizen or lawful permanent resident relative through whom he or she would have normally obtained that benefit. The definition does not include aliens whose applications are based on abuse or battery not linked to their failure to meet the requirements or perpetrated by someone other than a U.S. citizen or lawful permanent resident relative. Congress could have made the waiver under section 212(a)(9)(C)(iii) of the Act available to all victims of battery or extreme cruelty, but chose to specify that only those who meet the definition of a VAWA self-petitioner could qualify. The applicant's contention that her waiver application, which must be linked to her status as a VAWA self-petitioner, can be based on abuse not related to the VAWA self-petition is not supported by the text of the statute.

Finally, although the applicant's past experiences of abuse may have made her particularly vulnerable to abuse by Mr. [REDACTED] a connection between those experiences does not establish the required connection between the abuse that is the subject of her VAWA self-petition and her previous departure and unlawful reentry.

Where she does not qualify for a waiver under section 212(a)(9)(C)(iii) of the Act, the applicant may only overcome inadmissibility under section 212(a)(9)(C)(i) of the Act by obtaining consent to reapply for admission pursuant to section 212(a)(9)(C)(ii). However, an alien inadmissible under section 212(a)(9)(C) may not apply for permission to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). To avoid inadmissibility under this section, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States, *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is still present in the United States, and she must depart and remain outside the United States for ten years before she is eligible to seek permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. The applicant in this case does not qualify for an exception or waiver under the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.