U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31593937

Date: MAY. 06, 2024

Appeal of Portland, Oregon Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant has applied to adjust status to that of a lawful permanent resident as a self-petitioning spouse of a U.S. citizen and seeks a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(iii). The Director of the Portland, Oregon Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, after concluding she was inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having reentered the United States without admission after being unlawfully present in the United States for an aggregate period of over one year and that the record did not establish that her departure from or reentry into the United States was connected to the battery or extreme cruelty that formed the basis of her self-petition, as required for the waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 212(a)(9)(C)(i)(I) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted is inadmissible. The accrual of unlawful presence for the purpose of inadmissibility determinations under this section of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997. An individual additionally does not accrue unlawful presence while under 18 years of age.[1] Section 212(a)(9)(B)(iii)(I). Pursuant to section 212(a)(9)(C)(iii) of the Act, the ground of inadmissibility above may be waived in the case of a noncitizen who is a VAWA self-petitioner if there is a connection between the noncitizen's battering or subjection to extreme cruelty and their departure from or reentry into the United States. *See* section 101(a)(51) of the Act (defining "VAWA self-petitioner").

The record reflects that the Applicant was married to her first spouse in [redacted] 1996 and that she entered the United States without being admitted in February 1996 when she was 16 years old. The Applicant's relationship with her first spouse became abusive as soon as they entered the United States. The Applicant departed the United States to Mexico with her first spouse in approximately March 2001, when she was 22 years old, and reentered the United States without being admitted

[1] The Applicant turned 18 in [redacted] 1997, which is prior the date of enactment of the unlawful presence provisions.

approximately two to three weeks later in April 2001. Her first spouse was removed from the United States in 2003 and she was legally divorced from him in [redacted] 2018. The Applicant met her current spouse in 2009 and they were legally married in [redacted] 2018. This marriage, unfortunately, was abusive as well, and was the basis for her Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA self-petition), which was received by U.S. Citizenship and Immigration Services in 2019.

The Applicant accrued over one year of unlawful presence from April 1, 1997, until she departed the United States in March 2001. She subsequently reentered the United States without admission in April 2001, rendering her inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The Applicant concedes, and the record establishes, that she is inadmissible under this ground of inadmissibility.

As noted above, the Director denied the Applicant's Form I-601 after determining she was ineligible for a waiver under section 212(a)(9)(C)(iii) because she claimed her departure and reentry in 2001 was connected to abuse by her first husband and therefore she did not establish her departure from or reentry into the United States was connected to the battery or extreme cruelty by her second spouse that formed the basis of her VAWA self-petition. On appeal, the Applicant asserts that the Director erred in finding that the Applicant was ineligible for the waiver because she has an approved VAWA self-petition and there is a connection between abuse she suffered and her departure and unlawful reentry into the United States in 2001. The Applicant acknowledges that the abuse upon which she based her eligibility was separate from and perpetrated by a different individual than the abuse upon which she based her VAWA self-petition. However, she claims that while section 212(a)(9)(C)(iii) of the Act and 8 C.F.R. § 204.2 (defining "battery or extreme cruelty" for purposes of eligibility for a VAWA self-petition) require that applicants for a waiver under the former provision have suffered mistreatment during their marriage to a U.S. citizen or lawful permanent resident, neither specify that eligibility for the waiver must be based upon the same abuse that forms the basis of the VAWA self-petition.

The Applicant's claim, however, is unavailing. As an initial matter, while the definition of battery or extreme cruelty found in 8 C.F.R. § 204.2 is pertinent to determining eligibility for a VAWA self-petition, it is not applicable to whether a VAWA self-petitioner meets the criteria for a waiver of inadmissibility in section 212(a)(9)(C)(iii) of the Act. Instead, at the time the Applicant filed her Form I-601, the form's instructions stated that with regard to the waiver available under section 212(a)(9)(C)(iii) of the Act, the "connection" between the unlawful presence and departure, or her subsequent unlawful entry into the United States, must be "between the battery or extreme cruelty that is the basis for the [self-petition]." *See generally* 8 C.F.R. § 103.2(a)(1) (stating that every application form, benefit request, or other document must be submitted to USCIS and executed in accordance with the form instructions, *which carry the weight of regulations*) (emphasis added); *see also United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound by governing statutes and regulations in force). And here, the Applicant does not submit any authority that the agency's interpretation of section 212(a)(9)(C)(iii) of the Act as provided in the form's instructions is incorrect. Thus, to establish eligibility for a waiver under section 212(a)(9)(C)(iii) of the Act, the Applicant must establish the battery or extreme cruelty that was the basis for her VAWA self-petition is connected to her departure from or reentry into the United States.

We acknowledge that the Applicant has experienced numerous instances of abuse throughout her life, including during both of her marriages. However, as the Applicant admits, and the record establishes, her departure from and reentry into the United States in 2001 was related to abuse from her first spouse, which was not the basis of her VAWA self-petition. Accordingly, the Applicant has not established eligibility for a waiver under section 212(a)(9)(C)(iii) of the Act and the appeal will be dismissed.[2]

ORDER: The appeal is dismissed.

[2] We note that section 212(a)(9)(C)(ii) provides that inadmissibility under section 212(a)(9)(C)(i) shall not apply to a noncitizen who seeks admission more than 10 years after the date of their last departure from the United States if they first obtain consent to reapply for admission prior to their attempt to be readmitted. The Applicant does not claim, nor does the record reflect, that section 212(a)(9)(C)(ii) applies to her.