U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33814877

Date: SEP. 6, 2024

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen)

The Petitioner seeks immigrant classification as an abused child of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv). Under the Violence Against Women Act (VAWA), an abused child may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and subsequent motions to reopen and reconsider, concluding that the Petitioner did not establish a qualifying relationship to a U.S. citizen step-parent, as required, because she was over 18 years of age at the time her biological mother married her U.S. citizen step-father. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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.

I. LAW

A petitioner may be eligible for immigrant classification under VAWA as the "child" of a U.S. citizen if they demonstrate, among other requirements, that the U.S. citizen parent subjected them to battery or extreme cruelty. Section 204(a)(1)(A)(iv) of the Act. "Child" is defined, as relevant here, as an unmarried person under 21 years of age who is "a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred." Section 101(b)(1)(B) of the Act. If the petitioner does not file the VAWA petition before attaining 21 years of age, the VAWA petition shall nonetheless be treated as having been filed before such time if the petitioner files the VAWA petition before attaining 25 years of age and demonstrates that the abuse was at least one central reason for the delay in filing. Section 204(a)(1)(D)(v) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

In this case, the Petitioner, a citizen of Brazil, indicated on her VAWA petition that she is the child of an abusive U.S. citizen. The record indicates that her mother, F-F-,[1] married R-F-, a U.S. citizen, in [redacted]2019, when the Petitioner was 21 years old.

In denying the petition and subsequent motions to reopen and reconsider, the Director determined that the record clearly demonstrates the Petitioner was over the age of 18 at the time her mother married her U.S. citizen stepfather, and as such, she cannot be considered a stepchild pursuant to section 101(b)(1)(B) of the Act. The Director specifically acknowledged that in her statement, the Petitioner admitted that she was over the age of 18 at the time her mother married her stepfather. The Director also acknowledged that the Petitioner presented information about an unrelated case where another person unlawfully received a benefit; however, the Director explained that, regardless of the letter from the individual in that unrelated case, USCIS cannot compare the cases to one another and no matter the circumstances in that case, the Petitioner still does not meet the definition of a "child" as required under the Act.

On appeal, the Petitioner admits that she was 20 years old when her mother married her stepfather. She argues, however, that she presents an unrelated case where the petitioner in that case was also over the age of 18 when her mother married her abusive stepfather, but she was granted VAWA classification regardless of that fact. The Petitioner asserts that the facts of her case are comparable to the facts in the presented case, particularly in the eligibility for VAWA classification even if the marriage establishing the qualifying relationship occurred after the stepchild's 18th birthday. She further indicates that USCIS acknowledged the "horrible hardships and experiences [she] endured with [her stepfather]," but solely denied her VAWA petition because of her age at the time her mother married her stepfather.

Upon de novo review, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the Petitioner has not provided any evidence to overcome the Director's decision on appeal. The record clearly demonstrates, and the Petitioner admits, that the Petitioner was over the age of 18 when her mother married her stepfather in [redacted]2019. Thus, the Petitioner does not meet the statutory definition of a "child" pursuant to section 101(b)(1)(B) of the Act and cannot establish eligibility for the instant classification as the battered child of a U.S. citizen. Further, the Petitioner's insistence on comparing her case to that of an unrelated individual is misguided. We cannot compare the Petitioner's case to any other,[2]

[1] We use initials to protect the privacy of individuals.

[2] We are not bound by service center or district director's decisions. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam).

regardless of whether the other individual has granted "authorization" for us to do so. Moreover, if the referenced VAWA petition was approved based on the same fact regarding that individual's age at the time of her mother's marriage to her abusive stepfather, the approval would constitute material and gross error on the part of the Director. Our office is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). The Petitioner in this case is statutorily ineligible for the benefit sought.

Accordingly, we cannot conclude that the Petitioner has met her burden of establishing a qualifying parent-child relationship with a U.S. citizen for purposes of immigrant classification under section 204(a)(1)(A)(iv) of the Act. Because the Petitioner has not demonstrated a qualifying parent-child relationship, she also has not established that she is eligible for immediate relative classification based on such a relationship.[3] The petition will therefore remain denied.

ORDER: The appeal is dismissed.

[3] Since the identified basis for denial is dispositive of the Petitioner's appeal, we do not address whether the Petitioner has established eligibility under the remaining VAWA criteria at section 204(a)(1)(A)(iii) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).