U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 15856931

Date: FEB. 24, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident (LPR) under the Violence Against Women Act (VAWA) provisions codified at the Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

A petitioner who is the spouse of a United States lawful permanent resident (LPR) may self-petition for VAWA classification if the petitioner demonstrates, among other requirements, that they have a qualifying relationship. Section 204(a)(1)(B)(ii) of the Act. In addition, a petitioner must show that they are eligible immigrant classification under section 203(a)(2)(A) of the Act. Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). A petitioner who is no longer married remains eligible to self-petition under these provisions if they were a *bona fide* spouse of an LPR within the past two years and demonstrate a connection between the legal termination of the marriage within the past two years and battery or extreme cruelty by the LPR spouse. Section 204(a)(1)()(ii)(II)(aa)(CC)(bbb) of the Act.

A petitioner may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The Administrative Appeals Office (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).

## II. ANALYSIS

The Petitioner is a native and citizen of Mexico who entered the United States without inspection in 2007 and filed her VAWA petition in February 2018 claiming to have been in a common law marriage and resided with her LPR spouse, I-E-[1] from 2011 to September 2012. With the VAWA petition and in response to the Director's request for evidence (RFE) the Petitioner submitted personal statements,

[1] We use initials to protect individual identities.

financial records, printouts of Facebook messages with I-E-, criminal records for I-E-'s assault against the Petitioner, a protective order against I-E-, letters of support for the Petitioner, a letter from a counselor at a domestic violence center, civil documents, and country conditions information for Mexico. In denying the VAWA petition the Director determined that the Petitioner did not establish a qualifying relationship as the spouse of an LPR and was eligible for immigrant classification based on the qualifying relationship. On appeal the Petitioner submits a brief asserting that the Director misstated the law about intended spouse and marriage. She also submits legal decisions by Texas appellate courts.

In her statement submitted below the Petitioner indicated that she met I-E- in 2009 and they began living together sometime in 2011, but in response to the Director's RFE she clarified that they began living together in winter 2010. She maintained that they considered themselves as a married husband and wife but lived with a friend, under whose name bills were listed, and that they later rented a house together but that she was unable to obtain documentation. The Petitioner asserted that she and I-E- never opened a bank account because he controlled their money; that her daughter's school listed him as the emergency contact but she was unable to obtain a copy of the record; that a friend of I-E- prepared the couple's 2011 taxes, but she has lost contact with him; and that she was unable to obtain other years' taxes because the preparer needed IDs from both her and I-E-. In one letter of support the writer identifies himself as a friend who believes the Petitioner and I-E- were married as they lived together from 2010 to 2012 and that I-E- said "all the time and introduced" the Petitioner as his wife. The Petitioner stated that she and I-E- separated in 2012. In a statement dated October 2019 the Petitioner indicated that in "September of this year" she saw an attorney to seek divorce from I-E- but then learned that I-E- was married to someone else during the time she was with him and that he had not gotten divorced until 2014.

In the denying the petition the Director recognized the Petitioner's relationship with I-E- and evidence that she resided with him and was subjected to battery or extreme cruelty by him but found that because she did not establish a qualifying relationship as defined by statute and required with a VAWA petition she could not meet other requirements. The Director, citing to Texas Family Code sections 2.401and 2.402(a), concluded that the Petitioner was not party to an informal marriage to I-E- as the Petitioner stated I-E- was married to another person during his relationship with her.

The Director acknowledged the Petitioner's claim that she did not know until 2014 about I-E-'s marriage so had believed she was married during their relationship. Nonetheless, the Director determined, that under Texas law, the Petitioner and I-E- did not have an informal marriage. In addition, based on the Petitioner's statements that a marriage ceremony was never performed, the Director further determined that she did not qualify as an intended spouse because the Act defines "intended spouse" as an individual who believes they were married to a U.S. citizen or LPR with whom a marriage ceremony was performed but whose marriage is not legitimate solely because of the bigamy of the spouse.

On appeal the Petitioner contends through counsel that an intended spouse for purposes of VAWA eligibility does not need to have had a marriage ceremony performed; they only need demonstrate they intended to marry but the marriage was not legitimate due to the LPR's bigamy. The Petitioner does not, however, provide a basis for this assertion. She argues instead that a marriage must be recognized as valid in the jurisdiction in which it was entered, and that Texas law is broad as it applies to applicants

who sign a declaration of informal marriage and to those who meet criteria of an agreement to be married, cohabitate, and hold themselves out to others as married. The Petitioner asserts that U.S. Citizenship and Immigrations Services (USCIS) is creating a narrow definition of marriage ceremony rather than deferring to an individual state's definition.

The issue before us is whether the Petitioner was in a valid marriage under Texas law or whether she meets the definition of a qualifying relationship as an intended spouse under the Act. After review of the record, we agree with the Director that evidence does not establish the Petitioner is or was in a qualifying relationship with I-E- for purposes of VAWA eligibility. The Petitioner has not demonstrated that she meets the definition of a qualifying relationship because she does not qualify as an informal spouse under Texas state law, nor does she meet the definition of the intended spouse to an LPR as provided at section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act.

Section 204(a)(1)(B)(ii)(II) of the Act provides for an individual to self-petition for immigrant status under these circumstances: when the petitioner is the spouse of a lawful permanent resident of the United States; or believed that they had married an LPR and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements to establish the existence of and *bona fides* of a marriage but the marriage is not legitimate solely because of the bigamy of the LPR; or who was a *bona fide* spouse of an LPR within the past two years and the LPR spouse lost status within the past two years due to an incident of domestic violence, or where the petitioner demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the LPR.

The Petitioner does not contend that she is currently married to I-E- or that her marriage was legally terminated. She argues, however, that she qualifies as the intended spouse of I-E- where the marriage is not legitimate solely because of I-E-'s bigamy and suggests that informal marriage in Texas is tantamount to having a marriage ceremony, as required by the Act. We disagree with the Petitioner's assertion as she conflates Texas law for informal marriage with requirements under the Act to self-petition for immigrant status.

The Board of Immigration Appeals has found that in order to determine whether a marriage is valid for immigration purposes, the relevant analysis involves determining first whether the marriage is valid under state law and then whether the marriage qualifies under the Act. *In re Lovo-Lara*, 23 I. & N. Dec. 748 (BIA 2005), citing *Adams v. Howerton*, 673 F.2d 1036, 1038 (9th Cir. 1982). At the time of the Petitioner's relationship with I-E- Texas law provided that a man and a woman desiring marriage must obtain a marriage license from a county clerk and have a marriage ceremony conducted by an authorized person within 72 hours of obtaining the license. *See* Texas Family Code sections 2.001. 2.202, 2.203, and 2.204. Texas law also provided for two circumstances for common law, or informal marriage:

> § 2.401. Proof of Informal Marriage
>
> (a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:
>
> (1) a declaration of their marriage has been signed as provided by this subchapter; or

(2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and they represented to others that they were married.

. . .

(b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

V.T.C.A., Family Code § 2.401 (West 2022)

The Petitioner does not assert that she and I-E- obtained a marriage license with a subsequent marriage ceremony in accordance with Texas law or that they signed a declaration of marriage, as provided at section 2.401(a)(1) of the Texas code. Rather, she suggests that they agreed to be married, lived together in the state of Texas, and represented themselves to others as married, as provided at 2.401(a)(2) of the Texas code. However, section 2.401(a)(2)(d) further provides that a person "may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage." In addition, Texas courts have long held that there is no common law marriage where there is an impediment, including a still existent other marriage. *See Hinojos v. Railroad Retirement Bd.*, 323 F.2d 227 (5th Cir.1963) (The U.S. Court of Appeals for the Fifth Circuit found that no common-law marriage can come into existence under Texas law so long as legal impediment to marriage exists, and that in the case before it such impediment was removed when one of the parties divorced); *see also Villegas v. Griffin Industries*, 975 S.W.2d 745 (App 13 Dist. 1998) (a Texas appellate court determined that in addition to the statutory requirements to establish a valid informal marriage, "[t]here is, of course, one additional fundamental rule—that in order to establish a valid marriage, the parties must possess the legal capacity to marry and there must not be any legal impediment prohibiting the marriage contract."). Accordingly, the Director correctly determined that the Petitioner did not establish that she was informally married to I-E- and therefore did not establish a qualifying relationship for purposes of VAWA eligibility.

While the Petitioner then asserts that she qualifies for VAWA benefits as an intended spouse of an LPR abuser, the Act stipulates that for a self-petitioning, intended spouse a marriage ceremony be actually performed. The USCIS Policy Manual provides that to demonstrate a qualifying relationship to the abusive U.S. citizen or LPR as an intended spouse, the self-petitioner must submit evidence that includes to establish that a marriage ceremony was actually performed (*See* Volume 3: Humanitarian Protection and Parole, Part D, Violence Against Woman Act, (2)(B)(2) https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2.) However, the Act does not define the term *marriage ceremony*.

Black's Law Dictionary (11th ed. 2019) defines a marriage ceremony as the religious or civil proceeding that solemnizes a marriage. The Merriam-Webster Dictionary defines a ceremony as a formal act or series of acts prescribed by ritual, protocol, or convention. (www.merriam-webster.com/dictionary/ceremony). In establishing a valid marriage for purposes of spousal benefits, 20 C.F.R. § 404.346 provides, in part, that a marriage is deemed valid if in good faith an individual went through a marriage ceremony that would have resulted in a valid marriage except for a legal impediment which results because a previous marriage had not ended at the time of the ceremony. In the context of establishing eligibility for spousal benefits, the U.S. Court of Appeals for the Second

Circuit has called a ceremonial marriage as an objectively observable event occurring at a defined place and time. *Thomas v. Sullivan*, 922 F.2d 138 (2nd Cir. 1990). The Court further observed that when primary evidence such as official records are not available secondary proof can consist of testimony of witnesses. *Id* at 139.

Although asserting that a marriage ceremony need not be performed and she need only intent to marry, the Petitioner has not provided evidence or otherwise shown that an actual marriage ceremony is not required, contrary to the Act, nor has she submitted evidence that she took part in a marriage ceremony with an LPR. As described above, the Petitioner must establish that she was in a valid marriage for immigration purposes, including a marriage recognized under state law or that she meets the definition of an intended spouse. Here the Petitioner has not demonstrated these requirements as evidence does not demonstrate that she was in an informal marriage under Texas law or that she was an intended spouse as described in the Act. The Petitioner does not suggest that she signed a declaration of informal marriage and her statements only indicated that after meeting I-E- they began living together. In her affidavits below the Petitioner makes no reference to a marriage ceremony actually being performed, nor has she provided evidence of any ceremony, such as a record of officiating or accounts by witnesses in attendance, and on appeal does not assert that an actual marriage ceremony was performed but rather argues that a ceremony need not be performed as she only needs the intent to marry.

Accordingly, the Director correctly denied the petition, concluding that the Petitioner had not established the requisite qualifying spousal relationship with a lawful permanent resident of the United States and eligibility for immigrant classification under section 203(a)(2)(A) of the Act based on that qualifying relationship. On appeal the Petitioner has not overcome that decision and consequently she has not demonstrated that she is eligible for immigrant classification under VAWA.

**ORDER:** The appeal is dismissed.