



**U.S. Citizenship
and Immigration
Services**

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

In Re: 20011645

Date: JUL. 15, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) 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 denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), on the basis that the Petitioner had not established a qualifying marital relationship with a U.S. citizen and his corresponding eligibility for immigrant classification based on that relationship. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and evidence and reasserts his eligibility.

We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must submit evidence of the spousal relationship in the form of a marriage certificate and proof of the termination of all prior marriages for the petitioner and the abusive spouse. 8 C.F.R. § 204.2(c)(2)(ii).

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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, filed a VAWA petition in January 2018 based on his [REDACTED] 2016 marriage to L-J-B-,¹ a U.S. citizen. The Director denied the VAWA petition, concluding that he had not established the requisite qualifying relationship with a U.S. citizen spouse and therefore his corresponding eligibility for immigrant classification based on that qualifying relationship. Specifically, as explained in more detail in the Director's January 2021 request for evidence (RFE), the record indicated that the Petitioner had a prior marriage and did not include evidence of the termination of that marriage or alternatively, evidence establishing that he had no prior marriages, as required to establish the validity of his marriage to, and a qualifying relationship with, L-J-B-. See 8 C.F.R. § 204.2(c)(2)(ii) (evidentiary requirements for establishing a qualifying spousal relationship to a U.S. citizen spouse).

On appeal, the Petitioner asserts that he established a qualifying spousal relationship with a U.S. citizen, and contends that the Director did not consider all of the evidence submitted to support his assertions that he did not have any prior marriages, specifically the correspondence from the Directorate General of the Civil Registry (Civil Registry) in [REDACTED] Mexico, a copy of which he submits again with this appeal.

The record reflects that the Petitioner indicated that he had been married only once on his VAWA petition. However, a review of his administrative record disclosed an April 2013 Nonimmigrant Visa (NIV) application filed by the Petitioner in which he stated that he was married to H-G-I- at that time. As the Director's decision explained, on this NIV application, the Petitioner attested that no one had assisted him in completing the application, and the Petitioner's electronic signature certified that he had read and understood the questions on the NIV application and that his answers were true and correct to the best of his knowledge and belief. In denying the VAWA petition, the Director acknowledged H-G-I-'s statement, submitted in response to the RFE, affirming that she and the Petitioner had lived together, had a son together, but were not and had never been married.² The Director's decision concluded, however, that as these statements by H-G-I- directly contradicted the Petitioner's attestation on his NIV application, it was afforded limited probative value. The Director further determined that the record lacked credible objective evidence to corroborate the statement from H-G-I- with his RFE response, and therefore was insufficient to resolve the inconsistency in the Petitioner's statements on his NIV application and his VAWA petition regarding the existence of any prior marriages for him.

Upon *de novo* review of the record, we agree with the Petitioner's assertions on appeal that the Director did not address relevant evidence in the record in denying the VAWA petition. Specifically, the Director's decision did not discuss the supplemental statement provided by the Petitioner with his RFE response attesting that, although he lived with H-G-I- and had a son with her, he had not married her. Additionally the Director did not address the original correspondence from the Civil Registry in Mexico, submitted in support of this supplemental statement and to rebut evidence indicating that the

¹ We use initials throughout to protect the identity of the individuals.

² With the Petitioner's RFE response to the Director, he also submitted a sworn statement not addressed in the Director's decision.

Petitioner had previously married to H-G-I- in Mexico prior to marrying his U.S. citizen spouse in 2016.

According to the U.S. Department of State's Reciprocity Schedule for Mexico, as it relates to divorce certificates in Mexico, the Civil Registry is the issuing authority for such certificates there, and the certificates contain a seal and signature from the Civil Registry and are issued by the Civil Registry Officer.³ This reciprocity schedule further indicates that alternate evidence of a divorce in Mexico may include annotations on birth certificates listing marriages and divorces. Consistent with this information from the reciprocity schedule, the record reflects that the two documents in the record below from the Civil Registry relating to the Petitioner's and H-G-I-'s birth certificates are signed by an official of the Civil Registry and contain a raised seal. The issuing official for these Civil Registry documents confirmed that the Petitioner's and H-G-I-'s birth certificates, as presented in the folio book or in the database, did not contain a marginal notation indicating any marriages for either of them. The evidence submitted with the Petitioner's RFE response below directly relates to the Director's determination that the Petitioner did not establish the requisite qualifying spousal relationship with his U.S citizen spouse because he had not overcome evidence that he had been previously married. As the Petitioner's statement and the documents from the Civil Registry are material and relevant to his eligibility, the Director erred in failing to consider them. Accordingly, we will remand the matter to the Director for consideration of this evidence in the first instance in determining whether the Petitioner has established the requisite qualifying relationship and otherwise demonstrates eligibility for the classification sought.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ U.S. Department of State, *U.S. Visa: Reciprocity and Civil Documents by Country, Mexico*, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Mexico.html>.