



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

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

In Re: 21402309

Date: JUN. 15, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a citizen of China, 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 Petitioner filed a Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), based on her marriage to J-W-H-C-,<sup>1</sup> a U.S. citizen. The Director of the Vermont Service Center denied the VAWA petition because the Petitioner did not establish a qualifying relationship with her U.S. citizen spouse and her corresponding eligibility for immigrant classification based upon that relationship. Specifically, the Director determined that the Petitioner submitted insufficient evidence that she terminated a prior marriage in China before marrying J-W-H-C- in the United States. We dismissed the Petitioner's appeal and subsequent combined motion to reopen and motion to reconsider. The matter is now before us on a second combined motion to reopen and reconsider. The Petitioner submits a brief and new evidence.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will remand this matter for further proceedings consistent with this decision.

### I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as an

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<sup>1</sup> Names withheld to protect identities of individuals.

immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

Although we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The burden of proof is on the petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

In support of her VAWA petition, the Petitioner provided a Chinese *Civil Mediation Paper* issued in 2007 stating that her marriage to her prior spouse, C-W-C-, was terminated in [ ] 2007 through a court proceeding, and two accompanying *Notarial Certificates* dated 2015.<sup>2</sup> On appeal, the Petitioner submitted a Chinese *Certificate of Divorce* bearing a January 2019 stamp and confirming that the “civil mediation had been legally effective” and her marriage to C-W-C- “had dissolved” in 2007.<sup>3</sup> In our prior decision dismissing the appeal, incorporated here by reference, we determined that the Petitioner did not establish a qualifying relationship with her U.S. citizen spouse, or her corresponding eligibility for immigrant classification based on that relationship, because she did not demonstrate the legal termination of her prior marriage in China. Specifically, we found that the *Certificate of Divorce*, *Civil Mediation Paper*, and two *Notarial Certificates* did not conform to U.S. Department of State (DOS) Reciprocity Schedule description of Chinese divorce certificates. See DOS Reciprocity Schedule, <https://travel.state.gov/-content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/China.html>. On motion, the Petitioner contended that the documents previously submitted established her divorce from C-W-C- under Chinese law. In dismissing the motion, we noted that the Petitioner did not address the DOS Reciprocity Schedule requirements and, therefore, did not meet her burden to establish that her divorce records conform to Chinese law.

On current motion, the Petitioner submits a notarized civil mediation agreement that complies with the DOS Reciprocity Schedule description. The Petitioner asserts that, through the submission of a valid civil mediation agreement on motion, she has overcome the Director’s grounds for denial of her petition and established her eligibility under VAWA.

Because the new evidence submitted on motion is material to the Director’s grounds for denial of the VAWA petition, we will remand this matter to the Director to consider this evidence in the first instance and redetermine whether the Petitioner has established her eligibility for immigrant classification under VAWA. This remand is based solely on the submission of new evidence not previously before the Director. We do not assess whether the Petitioner has otherwise met her burden of proof to establish eligibility.

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<sup>2</sup> The *Notarial Certificates* certified: “that the foregoing copy conforms to the original Civil Mediation Paper of the People’s Court of [ ] City showed to me, the notary public, by [C-W-C-] and that the attached English translation of the copy conforms to the original document in Chinese[;]” and “that the foregoing English Translation of the Notarial Certificate . . . conforms to the Notarial Certificate in Chinese.”

<sup>3</sup> The *Certificate of Divorce* is accompanied by an Affidavit of Translator notarized in the United States.

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