



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

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

In Re: 20844138

Date: MAY 25, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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 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).

Even if a petitioner is otherwise eligible for VAWA classification, however, a VAWA petition may not be approved if the petitioner previously received, or sought to receive, immediate relative status as the spouse of a U.S. citizen by attempting, conspiring, or entering into a marriage for the purpose of evading the immigration laws. Section 204(c) of the Act. The Director will deny an immigrant visa petition where there is “substantial and probative” evidence of an attempt or conspiracy to enter into a marriage for the purpose of evading immigration laws. 8 C.F.R. § 204.2(a)(1)(ii). A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978).

Petitioners bear the burden of proof 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 is a native and citizen of Nigeria who entered the United States in 2015 as a B2 nonimmigrant visitor. In [REDACTED] 2017 she married a U.S. citizen, E-W-V-,¹ with whom she claimed to have resided from November 2016 until March 2019. In May 2019 she filed her VAWA petition along with personal declarations, a statement from her counsel about the Nigerian divorce procedures, letters of support, a police report, financial records, an insurance policy, civil documents, and photos. The Director denied the petition, finding that the Petitioner did not establish a qualifying relationship with a U.S. citizen or lawful permanent resident, that she was eligible for immigrant classification under sections 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, that she has resided with a U.S. citizen or lawful permanent resident spouse, and that she entered into a qualifying relationship in good faith. On appeal, the Petitioner submits a brief and a psychiatric evaluation.

A. Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

In denying the petition, the Director determined that a certificate of divorce the Petitioner provided as evidence her prior marriage in Nigeria had been terminated was not sufficient. The Director concluded that the Petitioner did not provide a proper decree nisi and decree absolute in accordance with the U.S. Department of State Reciprocity and Civil Documents for Nigeria, so the evidence was insufficient to establish legal termination of her prior marriage and that she has a qualifying relationship.

On appeal, the Petitioner asserts that the Director erred because a customary marriage in Nigeria is dissolved under customary law and can be dissolved judicially or extrajudicially, and that she presented enough evidence to show her marriage was properly dissolved under the customary law of Lagos State.

The Department of State's Reciprocity Schedule for Nigeria² identifies a decree nisi and decree absolute issued by the High Court of Justice as establishing termination of a marriage, but it also explains that there are numerous ways to terminate and document the termination of a customary marriage. The schedule indicates that for marriages under native law and custom, a divorce decree may be issued by a Customary Court, while many divorces for customary marriages will have no written record, and marriages under native law and custom will also be dissolved by custom, not recorded, or recorded by a sworn affidavit. The schedule provides that there is no legal requirement a marriage be dissolved by a court or that the divorce be registered or documented and that a Customary Court or a Magistrate Court may also dissolve a marriage even if one spouse is not present. The schedule states that documentation of a customary divorce may include the filing of an affidavit by one or both parties with a Customary Court or issuance of a divorce decree by the court.

In this case, the Petitioner provided a document labelled Dissolution of Marriage with a heading In the Customary Court of [REDACTED]. It identifies the Petitioner and her ex-spouse as married according to native law and custom and indicates that the Petitioner's ex-spouse requested the court to dissolve the marriage and that the marriage was dissolved [REDACTED] 2016. As this document appears to conform with requirements identified in the Department of State schedule, the Petitioner has established that

¹ We use initials to protect individual identities.

² <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html>

her prior marriage was terminated and that she has a qualifying relationship with a U.S. citizen spouse and a corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Therefore, we will withdraw these grounds of denial in the Director's decision. Notwithstanding this determination, however, as the Petitioner has not established that she entered marriage with E-W-V- in good faith and that they resided together, she has not established her eligibility for immigration classification pursuant to VAWA.

B. Good Faith Marriage and Joint Residence with E-W-V-

The Director concluded that the Petitioner's marriage certificate and photos were not sufficient to establish her good faith in entering marriage and that she resided with E-W-V-. The Director determined that the Petitioner did not provide sufficient detail of her intentions upon entering marriage or details regarding their daily routines to demonstrate that she married in good faith and that they resided together. The Director found that declarations from the Petitioner's cousin, T-O-, with whom she claimed the couple lived, lacked probative detail to corroborate claims of good faith marriage and shared residence as they did not include information about the residence, daily routines, or the Petitioner's contributions to the residence. The Director found that a letter from a fellow church member, V-T-, was brief without providing insight into the dynamics of the Petitioner's relationship with E-W-V-. The Director noted that evidence did not show the life insurance policy submitted with the petition was issued and maintained, and further explained that although the lack of documentary evidence was not disqualifying, the evidence provided by the Petitioner was insufficient to determine she entered marriage in good faith and shared residence with E-W-V-.

We agree with the Director's determination that the Petitioner did not demonstrate she entered marriage with E-W-V- in good faith and that they shared residence together. In her declarations, the Petitioner recalled that she met E-W-V- in a park in 2016, that they started a conversation, that they seemed to have a connection, and that they began exchanging text messages. She stated that they developed a strong friendship of respect and understanding and that they soon began living in a downstairs room of her cousin's home where they had a separate entrance and shared a bathroom with relatives. She claimed that E-W-V- worked weekends but would call off work for family time. The Petitioner contended that in November 2017 E-W-V-'s behavior changed where he did not come home on time or answer her calls and got angry at her, but he apologized, and they married in [REDACTED] 2017 with plans for a later ceremony. She recalled that by July 2018 E-W-V- again began to misbehave, they argued often, he began insulting her, she once heard a woman's voice in the background of a phone call, and she saw a text message on his phone about a baby coming. The Petitioner stated that E-W-V- left the home and did not attend their interview for the Form I-130, Petition for Alien Relative. She explained that he would not make himself available to open a joint bank account, that he would not file a joint tax return because he said he owed money to the IRS, and that they had no joint property because she did not have a green card and was barely making enough money for food.

T-O- claimed that the Petitioner and E-W-V- resided in his home but he did not provide a lease because he was helping her, and that the couple was around most evenings but sometimes went out on weekends. V-T- stated that he saw the Petitioner and E-W-V- at church, then suddenly only she was coming, and that she told him they had separated and that E-W-V- impregnated another woman.

On appeal, the Petitioner argues that she provided enough evidence of shared residence, that her cousin's sworn declaration states that he provided accommodation without a lease agreement, and that a lease is not the only evidence for shared residence. She further contends that it is a wrong application of law for the Director to find that her cousin did not provide details of property, neighbors, daily routines, or what the Petitioner brought to the residence, and that she already explained the life insurance was declined because she did not have work authorization. The Petitioner maintains that it is difficult for an alien spouse to get joint documentation and that she explained E-W-V- never made himself available for a joint bank account and refused to file tax returns together.

The Petitioner's declarations were general and offered few details and little insight into the development of their relationship, shared experiences, mutual interests, or wedding ceremony to establish her intent upon entering marriage. She also did not describe a daily routine or provide other details to demonstrate that she and E-W-V- shared residence together. Although the Petitioner's declaration submitted in response to the Director's request for evidence provided a detailed description of the house and neighborhood where she claims she and E-W-V- resided together, she offered no details of a shared routine there. Beyond stating that the Petitioner and E-W-V- resided in his home and that the couple was there most evenings, the Petitioner's cousin provided no details of their relationship or observations of any interactions between them that would support the Petitioner's claims of good faith marriage and joint residence. The psychiatric evaluation describes E-W-V-'s behavior as reported by the Petitioner but does not offer insight into their relationship or any other detail to evince good faith marriage or joint residence.³

While we recognize that some traditional forms of evidence of a good faith marriage and shared residence may be difficult to obtain as the result of an abusive relationship, the documentary evidence submitted by the Petitioner is not sufficient and the Petitioner's declarations and the affidavits of her cousin lack probative detail to demonstrate good faith intentions at the time of the marriage and shared residence.

The Petitioner's arguments on appeal are not sufficient, standing alone or viewed in totality with the underlying record, to meet her burden. As the Petitioner has not established these requirements, she has not demonstrated that she is eligible for immigrant classification pursuant to VAWA.

ORDER: The appeal is dismissed.

³ The psychiatric evaluation submitted on appeal shows that the Petitioner was diagnosed with an adjustment disorder with mixed anxiety and depressed mood. The evaluation indicates that the Petitioner reported symptoms of depression and anxiety due to abuse from her husband.