U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29042540

Date: DEC. 12, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse 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 petition, concluding that the record did not establish that the Petitioner was in a qualifying relationship with his U.S. citizen spouse because he could not establish the termination of his prior marriage in Nigeria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in relevant part, that they have a qualifying relationship with their U.S. citizen spouse and are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i), based on that relationship. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1). Among other things, a petitioner must submit evidence of the qualifying marital relationship in the form of a marriage certificate and proof of the termination of all prior marriages for the petitioner and the abuser. 8 C.F.R. § 204.2(c)(2)(ii). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) determines, in our sole discretion, what evidence is credible and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a citizen and national of Nigeria, entered the United States in January 2016 on a student visa. He married T-L-J-,[1] a U.S. citizen, in [redacted] 2017[2] and filed his VAWA petition in May 2020 based on claimed abuse in that marriage. The Petitioner had previously been married to F-B-O- in Nigeria but claims the marriage was terminated in 2017. The Director determined that the documents provided as evidence of termination of the Petitioner's prior marriage were not credible and therefore not sufficient to establish that he was free to marry T-L-J-. Accordingly, the Director denied the VAWA petition based on a conclusion that the Petitioner had not shown a qualifying relationship with his U.S. citizen spouse and corresponding eligibility for immigrant classification.

In support of his VAWA petition, the Petitioner submitted in relevant part a photocopy of a Decree Nisi of Dissolution of Marriage issued by the [redacted], bearing a stamp and signature from 2017 (2017 Decree Nisi), listing suit number [redacted]. The 2017 Decree Nisi indicated that the Petitioner and F-B-O- were married in [redacted] 2005 and a petition to dissolve the marriage was decided on [redacted], 2017. The 2017 Decree Nisi indicated that the decree would become absolute three months from the date of issuance. The Petitioner also submitted a copy of a Certificate of Decree Absolute (2017 Decree Absolute) issued by the [redacted], also bearing suit number [redacted], indicating that the 2017 Decree Nisi became absolute on [redacted], 2017.

The Director issued a request for evidence (RFE), noting that although the 2017 Decree Nisi and Decree Absolute were issued in 2017, the suit number indicated that the case was filed in 2013. Further, the Director stated that the format of the suit number was inconsistent with information from the U.S. Consulate in Lagos, Nigeria about the proper format of suit numbers, the signature on the documents did not match information USCIS obtained about the authentic signature of the relevant authority, and a search of the suit number in the [redacted] Information System did not produce any results.

In response to the RFE, the Petitioner submitted a letter from a law firm in Nigeria, G-L- Solicitors and Advocates (G-L-), explaining that they contacted the [redacted] to request authentication of the suit and received a response showing "that the mentioned suit was formally instituted in court and the record of the court evidently described the parties vis a vis the suit number." G-L- also attached a letter from the [redacted] and "revised" versions of the Decree Nisi and Certificate of Decree Absolute. The letter from the [redacted], signed in December 2022 (2022 Judiciary letter), indicated that the divorce suit "referenced as: Suit No. [redacted]" was instituted in [redacted] 2013, adjudicated in [redacted] 2017, and made absolute in [redacted] 2017. The letter also stated that the 2017 Decree Nisi and Decree Absolute "may have been queried to be inconsistent with regards to the format, issuing signature/stamp and electronic search/verification," and those documents were therefore "withdrawn while [a] corrected copy" addressing "the defects observed" was attached. Furthermore, the 2022 Judiciary letter indicated the suit was "manually filed" in 2013 prior to the use of an electronic filing system in January 2014 and therefore would not appear in online searches. Also, the letter "affirm[ed] the correctness of suit no [redacted] . . . as same is

[1] We use initials to protect privacy.
[2] The Petitioner and T-L-J- divorced in 2019.

in accordance with the standard formats and order of pre-online filing period . . . ." Finally, the letter indicates that the [redacted] assures the authenticity of the corrected documents and the seal, signature, and stamp therein. The attached Decree Nisi and Certificate of Decree Absolute, issued in 2022 (2022 Decree Nisi and Decree Absolute), list the suit number as [redacted] and provide dates of the divorce consistent with the previously submitted documents.

After consideration of the evidence submitted below and in response to the RFE, the Director denied the VAWA petition. The Director noted credibility concerns and determined that the 2017 Decree Nisi and Decree Absolute did not appear to be genuine. In particular, the Director reiterated that the documents were issued in 2017 while the suit number indicated the suit was filed in 2013, the case was not searchable online, and the suit number and signature did not match information from the U.S. Consulate in Lagos about the proper format of authentic suit numbers and signatures. With regard to the 2022 Decree Nisi and Decree Absolute, the Director noted a discrepancy between the suit number listed there, [redacted], and the suit number on the 2017 Decree Nisi and Decree Absolute, [redacted]. Additionally, the Director noted that although the same person purportedly signed the 2017 and 2022 decrees, the signature is different and the title on the accompanying stamp does not match USCIS information about authentic signature stamps from that individual. Finally, the Director indicated that the person who signed the letter from the [redacted] was not the correct official to do so per information from the U.S. Consulate in Lagos. Accordingly, the Director exercised discretion to give the documents reduced weight due to unresolved discrepancies and determined they were insufficient to show that the Petitioner's marriage to F-B-O- in Nigeria was legally terminated such that he was eligible to marry T-L-J- in the United States. As a result, the Director concluded that the Petitioner had not met his burden of showing a qualifying relationship with a U.S. citizen spouse and corresponding eligibility for immigrant classification, as required under section 204(a)(1)(A)(iii)(II) of the Act and 8 C.F.R. § 204.2(c)(1).

The Petitioner has not established by a preponderance of the evidence that his marriage to F-B-O- was legally terminated prior to his marriage to T-L-J- in the United States. Therefore, he has not overcome the Director's ground for denial.

On appeal, the Petitioner argues that the Director erred in giving his supporting documentation reduced weight due to credibility concerns. Relating to the 2017 issuance date for the Decree Nisi and Decree Absolute when the case was initiated in August 2013, he states there is no basis for requiring "that the filing date and the issuance date must be identical" and "in most judicial systems same day adjudication is unlikely . . . ." He references guidance from the U.S. Department of State which states, "After filing the necessary papers in Court, there is a trial," at the end of which the court "may grant or refuse the divorce." U.S. Department of State, Reciprocity Schedule: Nigeria, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html. The Petitioner alleges that this "corroborates and is consistent with the filing of the petition in August 2013 and the adjudication in 2017." However, the Director did not indicate that the Decree Nisi and Decree Absolute should have been issued on the same day the suit was initiated, but instead noted the gap of years between the two dates. We recognize that divorce proceedings would not reasonably occur on the same day or immediately after a petition for divorce is filed, but the gap of over three years and four months between the claimed date of filing and adjudication casts doubt on the authenticity of the documents. The Petitioner has not provided evidence or explanation as to

the delay between the filing of the suit in 2013 and the issuance of the Decree Nisi and Decree Absolute in 2017.

Additionally, the psychological evaluation the Petitioner submitted with his initial filing states that when he graduated with his master's degree in the United States in August 2015, "he went back to his native country in order to finalize his divorce from his wife . . . and came back to USA in February 2016 . . . ." This timeline, which suggests he finalized his divorce sometime between [redacted] 2015 and [redacted] 2016, conflicts with the information indicating that the Decree Nisi was issued in [redacted] 2017, with the Petitioner present in court, and the divorce became absolute in [redacted] 2017.

On appeal, the Petitioner submits a letter from a new law firm in Nigeria, D-C-C-, claiming they contacted the court to confirm the authenticity of the Decree Nisi and Decree Absolute. D-C-C- states "there was a scrivener's error in the certificates earlier issued [in that] . . . the clerical officer made clerical omission in the forms . . ." so the documents were withdrawn and reissued. D-C-C- attaches copies of the 2022 Decree Nisi and Decree Absolute as claimed genuine documents. Additionally, the Petitioner submits a 2023 letter from the [redacted] (2023 Judiciary letter) to D-C-C- "reiterat[ing] and maintain[ing] the contents of" its prior letter to G-L- and the 2022 Decree Nisi and Decree Absolute. The 2023 Judiciary letter recalls the withdrawal of the "purportedly originally submitted" 2017 Decree Nisi and Decree Absolute "due to the faults and errors inherent in [them]" and states the 2022 Decree Nisi and Decree Absolute "remain[] correct, true and genuine . . . ." As for the suit number, the 2023 Judiciary letter states it is "not irregular for suit numbers to be written in abbreviated manner," such as writing the year 2013 as "13," so the suit numbers [redacted] and [redacted] "referred to same thing." The letter affirms the authority of the writer to speak on the authenticity of the suit and that the seal, signature, and stamp on the submitted documents are genuine.

The Petitioner states on appeal that the decision to approve or deny a VAWA petition is not discretionary and derogatory information should only be the basis for denial when it relates to eligibility. He correctly states that petitioners are not required to submit primary or specific types of evidence and that USCIS must consider any relevant, credible evidence. 8 C.F.R. § 204.2(c)(2)(i). He contends that he has submitted sufficient evidence to meet his burden of proof, including explanations about the discrepancies, verifications from two law firms and the [redacted], and documentation consistent with guidance from the U.S. Department of State. The Petitioner emphasizes that Nigeria is a developing nation where it can be difficult to obtain documentary evidence of a divorce. He asserts that denying a VAWA petition based on the inability make an absolute determination as to authenticity under U.S. documentary standards would result in disparate treatment of Nigerians. Additionally, he argues the Director did not provide specific information about why the verification letters and court documents are not acceptable but instead made vague statements about having "obtained information" that conflicts with his submissions.

We acknowledge the Petitioner's arguments and agree that absolute certainty as to the authenticity of a document is not required, as the Petitioner's burden is to show eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We must consider, and have considered, all relevant, credible evidence relating to the Petitioner's claim and do not require specific documents or types of evidence. However, USCIS determines, 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 discrepancies in this case are material to the Petitioner's eligibility and he has not submitted sufficient credible evidence to meet his burden.

The Petitioner has submitted explanations and evidence relating to the differently formatted suit numbers between the 2017 and 2022 Decree Nisi and Decree Absolute. However, although we recognize that the year 2013 may reasonably be abbreviated to "13" in certain circumstances, the record does not show why the suit number was written differently in the 2017 and 2022 decrees in this case. As the Director advised the Petitioner, the format of the suit number on the 2017 decrees is not consistent with government records about the format in authentic Nigerian divorce documents. Although the Petitioner obtained new 2022 decrees bearing a differently formatted suit number, he does not explain why the discrepancy occurred. The 2023 Judiciary letter states abbreviating the year is not uncommon but does not discuss why it was written differently in the 2017 Decree Nisi and Decree Absolute versus the 2022 Decree Nisi and Decree Absolute. As for the fact that the signatures on the 2017 and 2022 decrees differ despite being allegedly signed by the same individual, the Petitioner does not provide an explanation aside from his assertion, based on letters from the [redacted], that the signatures are authentic.

Additionally, although the letters from the [redacted] and D-C-C- indicate that the 2017 Decree Nisi and Decree Absolute were withdrawn due to "defects," "faults," or "scrivener's errors," the record is not clear as to what those errors were. The 2022 Judiciary letter states the 2017 decrees were withdrawn because they "may have been queried to be inconsistent with regards to the format, issuing signature/stamp and electronic search/verification," but the Petitioner also provides evidence asserting that those issues were not incorrect and there were reasonable explanations for each. He submits the 2023 Judiciary letter stating that the suit number format is consistent with common practice and the signatory and stamp are genuine, and the 2022 Judiciary letter states electronic searches of cases is not available for cases filed before 2014. Therefore, it is not clear whether the Petitioner admits there was inconsistent or incorrect information in the 2017 decrees or argues that those documents were properly issued. The record does not contain a clear basis from the High Court for withdrawing the 2017 decrees aside from an attempt to respond to the Director's RFE. The record does not outline the defects, faults, scrivener's errors, or omissions the [redacted] identified which caused it to determine that reissuance of "corrected" documents was necessary.

We acknowledge the Petitioner's argument that we have not provided specific details about the discrepancies between his evidence and government information about the proper format and signatures on Nigerian divorce documents. However, regarding derogatory information of which a petitioner is unaware, USCIS must provide an opportunity to rebut the information before a decision is issued. 8 C.F.R. § 103.2(b)(16)(i). USCIS is not required to provide the petitioner with an exhaustive list or copy of the derogatory information. *See Matter of Obaigbena*, 19 I&N Dec. at 536 (BIA 1988) (stating that if an adverse decision will be based on derogatory information of which the petitioner is unaware, "the petitioner must be so advised . . ." and must have a "reasonable opportunity to rebut the derogatory evidence"); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide, in painstaking detail, the evidence of fraud it finds" and that a notice of intent to deny provided sufficient notice and opportunity to respond to the derogatory information); *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) requires only that the government make a petitioner aware of the derogatory information used against them and provide an opportunity to explain; "[t]he

regulation . . . requires no more of the government."). In the RFE and subsequent denial, the Director notified the Petitioner that the format and contents of the suit number, signature, and stamp on the documents he submitted were not consistent with information from the U.S. Consulate in Lagos, Nigeria. As stated, the Petitioner bears the burden of proof to demonstrate his eligibility for VAWA classification by a preponderance of the evidence, and he has not done so here.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that he has a qualifying relationship with a U.S. citizen spouse and is eligible for classification as an immediate relative. Accordingly, he has not met the eligibility criteria for VAWA.

ORDER: The appeal is dismissed.