U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27333467

Date: JUL. 27, 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. On appeal, the Petitioner states that his marriage was properly terminated in Nigeria or, in the alternative, that Texas law renders his current marriage valid after the conclusion of divorce proceedings in Texas.

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 to 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 August 2016 with a visitor visa. He married T-P-[1], a U.S. citizen, in [redacted] 2017. The Petitioner had previously been married to O-L- in Nigeria but claims that the marriage was terminated two days prior to his entry in [redacted] 2016. The Director determined that the documents provided as evidence of termination of the Petitioner's prior marriage were not sufficient to establish that he was free to marry T-P- as required. On appeal, the Petitioner contends that the Certificate of Decree Nullification of Void Marriage is a valid document and should be recognized by USCIS. In the alternative, the Petitioner argues that section 6.202 of the Texas Family Code Annotated (Tex. Fam. Code Ann.) would render his current marriage valid because of his Texas divorce from O-L- issued in [redacted] 2023.

A. The Nigerian Divorce Documents Do Not Establish Eligibility.

As evidence of the termination of his prior marriage, the Petitioner provided a Decree Nisi and Divorce Absolute from the High Court of [redacted] District Holden at [redacted] with suit number [redacted] The Decree Nisi cited irreconcilable differences as the reason for divorce, a ground not found within the Nigerian Matrimonial Causes Act of 1970. In response to a request for evidence from the Director providing for the same, the Petitioner submitted a Certificate of Decree Nullification of Void Marriage (Decree of Nullity) with suit number [redacted] The Petitioner also provided a letter from the assistant chief registrar indicating that the Decree Nisi and Divorce Absolute submitted to the court for verification were not a true reflection of the order that was issued by the court. The letter does not indicate why the court would issue documents that did not reflect its own records. The Petitioner further provided a letter from his attorney to the [redacted] Judiciary requesting that the documents be certified as correct. The Director determined that the divorce documents provided were inconsistent with the available electronic records on the [redacted] Judiciary website and denied the petition.

On appeal, the Petitioner argues that the Decree of Nullity was effective from the date the marriage was contracted, that the information on the [redacted] Judiciary website is not reliable, and that USCIS should assess the documents provided rather than rely on the [redacted] Judiciary website to determine if the Petitioner has provided sufficient evidence to establish the termination of his prior marriage. The Petitioner states that a plain reading of the Decree of Nullity issued by the court indicates that the marriage was void at inception based on consanguinity. The Nigerian Matrimonial Causes Act of 1970 is the current law that governs marriage and divorce in Nigeria. According to Part I, section 4 of the Matrimonial Causes Act, two persons within the prohibited degree of affinity may marry if they receive permission from the court. The Petitioner has not provided any details regarding the degree of affinity to his prior spouse, how it was discovered, whether he was aware of the familial relationship prior to his marriage, or relevant details about how he received the original Decree Nisi and Divorce Absolute issued by the [redacted] Judiciary [redacted] District.

The Petitioner provided a letter from his Nigerian attorney dated December 2022 stating that the Petitioner's prior marriage was void ab initio. However, the Petitioner has not cited the specific section of the Matrimonial Causes Act that would allow for the nullification of a marriage at inception. Part

[1] We use initials to protect the privacy of individuals.

II, section 38 of the Matrimonial Causes Act states, in part, "[A] decree of nullity under this Act of a voidable marriage shall annul the marriage from and including the date on which the decree becomes absolute." This discrepancy further calls into question the accuracy and legitimacy of the Decree of Nullity because retroactive nullification of a voidable marriage appears contrary to the law in Nigeria. Given the above inconsistencies in the record, the Petitioner has not met his burden in establishing that his prior marriage was properly terminated under Nigerian law.

The Petitioner further argues that the [redacted] Judiciary website used by the Director to call the Decree of Nullity into question is unreliable. To support this assertion the Petitioner provides, on appeal, a December 2022 letter from the [redacted] Judiciary. The letter indicates that the court records were breached and destroyed in October 2020. The letter further states that the forms 35 & 41 were re-issued by the court in accordance with court records and that the suit number was undergoing revision. The forms 35 & 41 refer to the Decree Nisi and Divorce Absolute that the Petitioner claims are not the correct documents. The letter concludes by stating that steps are being taken to restore lost and tampered records including updating suit numbers and re-issuing documents. The October 2020 breach of the Court records would not have affected the paper Decree Nisi and Divorce Absolute submitted by the Petitioner as initial evidence of the termination of his prior marriage. Moreover, it is unclear why the court would reference forms 35 & 41 in the letter regarding the Petitioner's request since the Decree of Nullity is issued on Form 36 which is only mentioned in the final paragraph of the letter from the court.

While we acknowledge the evidence provided by the Petitioner attempting to clarify the circumstances surrounding his divorce documents, there remain significant inconsistencies in the record. Chiefly, neither the court or the Petitioner have addressed why a Decree Nisi and Divorce Absolute were issued to the Petitioner at the time of his divorce proceedings. The August 2022 letter from the [redacted] Judiciary states that these documents are not consistent with court records but does not address why the court would have issued those documents instead of the appropriate Decree of Nullity. USCIS is responsible for determining 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 collective evidence submitted to establish that the Petitioner's prior marriage was declared void at inception is not sufficient to establish eligibility under VAWA.

B. Texas Divorce Does Not Establish a Qualifying Relationship at the Time of Filing.

In addition to arguing that his divorce in Nigeria is valid, the Petitioner has also claims that his [redacted] 2023 divorce concluded in Texas renders him eligible for VAWA classification. Section 6.202 of the Tex. Fam. Code Ann. states:

Marriage During Prior Marriage

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

Section 6.202 of Tex. Fam. Code Ann. does not result in the retroactive validation of a prohibited marriage as is argued by the Petitioner. Rather, the marriage becomes valid as of the date the prior marriage is terminated if the two parties are living with one another and represent themselves as married. As a result, the Petitioner's marriage to T-P- would only become valid under Texas law beginning in January 2023. Section 204(a)(1)(A)(iii)(II) of the Act and the corresponding regulation at 8 C.F.R. § 204.2(c)(1)(i) require the Petitioner to establish that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner filed his application for VAWA classification in August 2020. The Petitioner's divorce from L-O- in the state of Texas was completed in [redacted] 2023. Therefore, the Petitioner has not established that his marriage to L-O- was properly terminated prior to the filing of his VAWA petition.

After a careful review of the entire record, including the evidence submitted on appeal, we conclude that the Petitioner has not established the legal termination of his previous marriage prior to filing the VAWA petition, as required. 8 C.F.R. §§ 103.2(b)(1), 204.2(c)(2)(ii). The Petitioner, therefore, has not established, by a preponderance of the evidence, a qualifying marital relationship with a U.S. citizen spouse or that he is eligible for immediate relative classification based on such relationship, as required.

ORDER: The appeal is dismissed.