



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

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

In Re: 26925846

Date: JUN. 15, 2023

Appeal of Vermont Service Center Decision

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

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 Form I-360, Petition for Abused Spouse of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish a qualifying marital relationship, and her corresponding eligibility for immigrant classification. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and asserts her eligibility.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A VAWA petitioner who is the spouse or ex-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, and must submit evidence of the 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(b)(2), (c)(2)(ii).

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). 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).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of India, last entered the United States in October 2014 on a nonimmigrant tourist visa, and married her U.S. citizen spouse, V-K-,¹ in California in [] 2016. She filed the instant VAWA petition in October 2019 based on a claim of battery and extreme cruelty by V-K-.

On her VAWA petition, the Petitioner indicated that she had been married two times, and her abuser, V-K-, had been married three times.² In support of her VAWA petition, the Petitioner submitted, in pertinent part, a copy of her marriage certificate to V-K- and a copy of a Stipulation and Order to Modify the Decree of Divorce, dated [] 2015, in reference to her divorce from her first husband. The submitted Stipulation and Order to Modify the Decree of Divorce, issued by the District Court in Nevada, modifies a Decree of Divorce previously entered in [] 2015 between the Petitioner and her first spouse, by the same court.

The Director issued a request for evidence (RFE), specifying that the Petitioner's address listed on the submitted Stipulation and Order to Modify the Decree of Divorce is in [] Nevada, but records indicate that she has not resided in Nevada since her entry to the United States. The Director specifically observed that the Petitioner's previously submitted Form G-325A, Biographic Information, lists her residency as New Jersey from October 2014 to March 2016, and then in California from March 2016 to the present. The Director requested that the Petitioner submit evidence of the legal termination of her previous marriage, valid in the jurisdiction where it was terminated. In response, the Petitioner submitted a copy of the Decree of Divorce from her first husband, dated [] 2015, from the District Court in Nevada. She also submitted a statement indicating that she found an inexpensive lawyer who told her he could file her divorce quickly and she agreed. She indicated that her lawyer did not tell her that she was required to reside in Nevada for a certain amount of time in order to file the divorce.

In denying the VAWA petition, the Director concluded that the Petitioner did not establish she (or her first spouse) was ever a resident of Nevada in order to obtain a divorce in that state and as such, her prior marriage was not legally terminated and she was not free to enter into the marriage with V-K-. The Director again noted that, though the Petitioner submitted a final Decree of Divorce from her first husband, she did not submit evidence, or a statement, to demonstrate that she was a resident of Nevada at the time of the divorce in [] 2015. The Director specifically observed that Nevada law requires that one member of the party filing for divorce must be a resident of Nevada for at least 6 weeks prior to filing for divorce.

On appeal, the Petitioner re-submits a copy of her Decree of Divorce, issued in [] 2015, and indicates that she resided in Nevada for three months at the time the divorce was filed. The Petitioner states that, though she did reside in Nevada for three months, and she informed her attorney of her residence in Nevada, her prior attorney did not include her Nevada address on the Form G-325A because she only resided there for three short months. The Petitioner explains that she was living at a friend's home in [] Nevada, the same address that is listed for the Petitioner on the Decree

¹ We use initials to protect the privacy of individuals.

² The record contains evidence of V-K-'s prior divorces.

of Divorce, from December 2014 to April 2015. The Petitioner further explains that her statement in response to the Director's RFE pertaining to her lack of knowledge that she was required to reside in Nevada for a certain amount of time in order to file the divorce was misinterpreted by the Director. She indicates that her statement did not signify she did not reside in Nevada, but that she was unaware of the specific time in residence requirement to file for a divorce in Nevada. She specifically asserts that she was living in Nevada at the time she filed for a divorce. The Petitioner submits a letter from G-R- stating that the Petitioner lived with G-R-, at her home in [REDACTED] Nevada, from December 2014 to April 2015, and that she saw her there seven days a week during that time. G-R- lists the address in [REDACTED] Nevada where the Petitioner lived with her, which is the same address listed on the Decree of Divorce for the Petitioner. Further, G-R- indicates that she has resided at this address in [REDACTED] Nevada since 2002 and included several bills from different time frames as evidence of her residence. The Petitioner also submits a letter from S-W-, G-R-'s niece, verifying that the Petitioner resided with G-R- at her [REDACTED] Nevada home from December 2014 to April 2015. S-W- confirms that she saw the Petitioner at G-R-'s home three to four days a week during that time.

Upon de novo review, based on the evidence submitted on appeal, the Petitioner has demonstrated, by a preponderance of the evidence, that her prior marriage was legally terminated and she was free to enter into the marriage with V-K-. In addition to the Petitioner's assertions and evidence submitted on appeal, we note that the Decree of Divorce issued by the District Court in Nevada lists the Petitioner's [REDACTED] Nevada address, as asserted on appeal, and specifically states that "this Court has complete jurisdiction in the premises, both as to the subject matter and the parties herein . . . [the Petitioner] is now, and has been for more than six weeks immediately preceding the commencement of this action, an actual bona fide resident actually domiciled in Nevada during said period" Given that the District Court in Nevada specifically addressed the residency requirement and found the Petitioner compliant, it is sufficient to corroborate the Petitioner's assertions on appeal. Based on the foregoing, the Petitioner has submitted sufficient evidence to establish, by a preponderance of the evidence, that she has a qualifying marital relationship with a U.S. citizen for purposes of immigrant classification under section 204(a)(1)(A)(iii) of the Act and is eligible for immediate relative classification based on such a relationship. Because the sole ground for denial of the VAWA petition has been overcome on appeal, we remand the matter to the Director to consider whether the Petitioner has satisfied the remaining eligibility requirements for immigrant classification under VAWA.

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