



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

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

In Re: 26846471

Date: JUN. 20, 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 resided with her U.S. citizen spouse or entered the marriage in good faith. The Petitioner then filed a combined motion to reopen and reconsider that was subsequently dismissed by the Director. The Petitioner submits, on appeal, a brief statement asserting eligibility for classification under VAWA.¹ 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the individual demonstrates, among other requirements, that they entered the marriage to the abusive U.S. citizen spouse in good faith and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(ix); *see also* 3 *USCIS Policy Manual* D.2(C), <https://www.uscis.gov/policy-manual> (explaining, in policy guidance, that the self-petitioning spouse must show that at the time of the marriage, they intended to establish a life together with the U.S. citizen spouse). Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits

¹ The Petitioner stated on the Form I-290B, Notice of Appeal or Motion that she would file a brief within 30 days, however, to date we have not received a brief.

from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(i), (vii).

A VAWA petitioner must also establish that they resided with the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(dd) of the Act. Evidence showing that the petitioner and the abusive spouse resided together may include employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, affidavits, or any other type of relevant credible evidence of residency. 8 C.F.R. § 204.2(c)(2)(i), (iii). 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 Petitioner is a citizen and national of Nigeria who entered the United States in July 2017 as a non-immigrant visitor. She married K-P-² a U.S. citizen, in [REDACTED] 2017 and filed the current VAWA petition based on that relationship. The Director denied the petition finding that the Petitioner had not established that she resided with K-P- or entered the marriage in good faith. The Petitioner filed a combined motion to reopen and reconsider the Director's decision providing additional affidavits and evidence of cohabitation and stating, among other things, that the Director appeared to have considered statements made by K-P- during the immigration process when making their decision. The Director dismissed the combined motion finding that the Petitioner had not submitted new evidence to support a motion to reopen or made a legal argument that would reverse the initial decision in the motion to reconsider.

On appeal, the Petitioner states that the Director's motion decision failed to properly consider the new materials submitted or to provide an analysis for why the new documents the Petitioner submitted on motion did not satisfy VAWA requirements. A review of the full record indicates that with the motion the Petitioner submitted an affidavit from her son, who had not previously provided an affidavit, and who claims to have resided with the Petitioner and her spouse and to have firsthand knowledge of their relationship. The Petitioner also submitted emails from her therapist, medical documentation, and detailed affidavits that had not been previously reviewed by the Director. Based on the Director's statement in the motion decision that no new evidence beyond the Petitioner's statement and photographs were submitted, the record does not indicate that the Director considered the affidavit of the Petitioner's son or the other new evidence submitted on motion. Moreover, the Director has not addressed the Petitioner's contention that they considered prohibited information provided by K-P- when making their decision on the VAWA petition. Remand is appropriate when the Director does not provide a full discussion of all the relevant evidence and the reasons for ineligibility. 8 C.F.R. § 103.3(a)(1)(i), (iii) (providing that the Director's decision must explain the specific reasons for denial); *see Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

Since it does not appear that the Director considered the evidence submitted with the combined motion, we will withdraw the Director's decision and remand the matter to the Director to evaluate and discuss, in the first instance, all relevant evidence, including the new evidence submitted on appeal, and determine if the Petitioner has established eligibility for classification under VAWA.

² We use initials to protect the privacy of individuals.

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