

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25530322 Date: MAY 26, 2023

Appeal of Vermont Service Center Decision

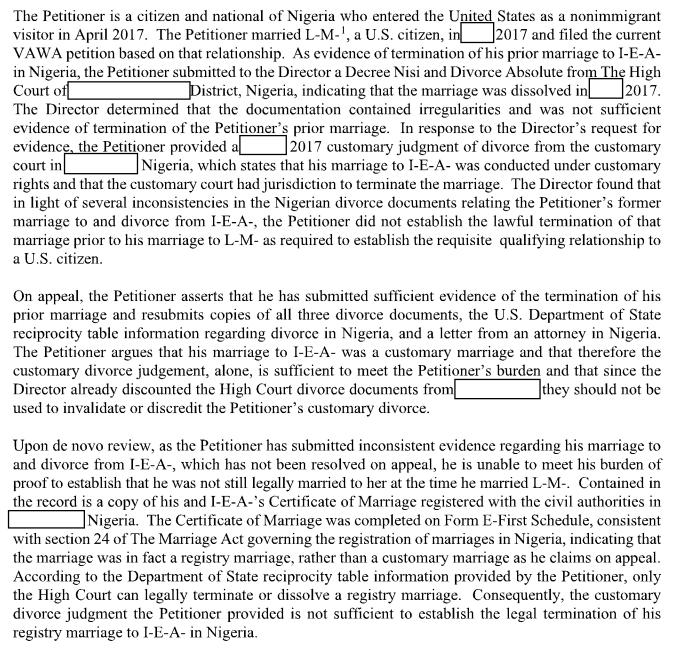
Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

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 Petitioner did not establish a qualifying spousal relationship because he did not demonstrate that his previous marriage had been terminated prior to his marriage to his abusive U.S. citizen spouse and consequently, he necessarily did not establish corresponding eligibility for immediate relative classification based on that relationship. 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.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the qualifying relative. Section 204(a)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1). A petitioner must also show that they 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). Section 204(a)(1)(A)(iii) 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(b)(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).



We acknowledge the divorce documents from the High Court that the Petitioner initially provided the Director; however, as stated, he specifically asserts on appeal that his marriage was a customary marriage and explicitly requests that we disregard those documents and rely on the customary divorce judgment instead to establish the termination of his former marriage. Moreover, he provides no explanation why he submitted the High Court divorce documents in the first instance if the marriage was a customary marriage and was never registered. Based on the evidence submitted, the Petitioner has not demonstrated, by a preponderance of the evidence, that he was free to legally marry L-M-, as the record indicates he was still legally married to his first spouse. See Matter of Chawathe, 25 I&N Dec.

¹ We use initials to protect the privacy of individuals.

at 375-76 (stating that the petitioner bears the burden to establish eligibility). Therefore, the Petitioner has not established he had a qualifying relationship as the spouse of a U.S. citizen.

After a careful review of the entire record, including the arguments made on appeal, we find that the Petitioner has not established the legal termination of his prior marriage, as required. 8 C.F.R. § 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, as required. Because the Petitioner has not demonstrated the requisite qualifying marital relationship, he also has not established that he is eligible for immediate relative classification based on such relationship.

ORDER: The appeal is dismissed.