



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

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

In Re: 27640664

Date: AUG. 14, 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 applicant established a qualifying relationship with her U.S. citizen spouse because she did not file the petition within two years of the termination of her marriage. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal the applicant asserts that her petition should be considered as filed within 2 years of the termination of her prior marriage.

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.

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the petitioner or their child 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). In addition, a petitioner who is divorced from their United States citizen spouse must demonstrate that they were a bona fide spouse of a United States citizen within the past two years. Section 204(a)(1)(A)(iii)(II)(CC) of the Act. U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition. However, the definition of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner, a citizen and national of Antigua, entered the United States as a non-immigrant visitor in November 2016 and married L-H-¹, a U.S. citizen, in [REDACTED] of the same year. The Petitioner and L-H- divorced on [REDACTED] 2019. USCIS received the current VAWA petition on February 16, 2021. The Director determined that the Petitioner had not filed the petition within 2 years of the termination of her prior marriage and therefore could not establish a qualifying relationship under VAWA.

On appeal, the Petitioner states that February 15, 2021 was a federal holiday and that she should be afforded an extension of the 2-year filing requirement pursuant to the definition of day under 8 C.F.R. § 1.2. Upon further review, the USCIS Policy Manual Volume 1, Part B, Chapter 6, regarding the submission of benefit requests on weekends or federal holidays states, in part, “[U]SCIS applies the regulatory definition of day and extends the deadline for filing until the end of the next business day that is not a Saturday, Sunday or federal holiday.” <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6>. Accordingly, USCIS considers the petition to have been filed within 2-years of the termination of the Petitioner’s qualifying relationship with her U.S. citizen spouse. The Director’s decision is withdrawn and the petition is remanded for an examination of whether the applicant meets all other 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.

¹ We use initials to protect the privacy of individuals.