



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

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

In Re: 29628546

Date: DEC. 07, 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 under the Violence Against Women Act (VAWA) provisions, codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii).

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner had entered a qualifying relationship with a United States citizen or lawful permanent resident. 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 into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner 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). A petitioner may establish that they entered a qualifying relationship if they establish that they believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. *See generally* 3 *USCIS Policy Manual* D.2(B)(2), <https://www.uscis.gov/policy-manual> (discussing the requirements for a petitioner to establish that they qualify as an intended spouse).

The Petitioner married J-M-G-¹, a United States citizen, and he filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in June 2021 based on this

¹ We use initials to protect the identity of individuals.

marriage. In the Director's review, she noted that the Petitioner had submitted a divorce decree from his initial marriage in Ecuador to M-C-O-, which indicated that their divorce was finalized on [] [] 2018. The Director noted that the Petitioner had indicated on his VAWA petition that his marriage to J-M-G- occurred on [] 2018; however, upon review, the marriage certificate submitted by the Petitioner indicated that the actual date of their marriage was [] 2018, and the certificate had been issued on [] 2018. As a result, the Director determined that the Petitioner was still married to M-C-O- at the time he married J-M-G-, and as such, he was not free to marry, and a qualifying relationship between the Petitioner and J-M-G- did not exist.

The Petitioner, on appeal, submits a brief, a personal affidavit, and an affidavit from his former spouse, M-C-O-. In his brief, the Petitioner contends that he was separated from M-C-O- since 2007, and claims that, as part of the abuse inflicted upon him by J-M-G-, he was convinced that his marriage "had already been annulled and that he was free to marry in the United States." However, as we note above, the applicable section of law relates to a petitioner whose marriage is not legitimate solely because of the bigamy of such citizen of the United States. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. Here, the Petitioner was the individual in the relationship who was not free to marry, because the divorce in his prior relationship had not been finalized prior to the Petitioner marrying J-M-G-. The Petitioner has not provided any relevant citation to establish that the above section of the Act has been interpreted to include a petitioner's bigamy, regardless of whether he could establish that it was related to the abuse he suffered. As such, in our de novo review, we concur with the Director. As the Petitioner's prior marriage to M-C-O- was not legally dissolved prior to his marriage to J-M-G-, he has not established that he entered a qualifying relationship and is therefore ineligible for VAWA classification.

ORDER: The appeal is dismissed.