



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

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

In Re: 29429998

Date: DEC. 8, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for 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 petition, concluding that the Petitioner did not establish a qualifying spousal relationship because she did not demonstrate that her previous marriage had been terminated prior to her marriage to her abusive U.S. citizen spouse and consequently, she necessarily did not establish corresponding eligibility for immediate relative classification based on that relationship. The Director dismissed a subsequent motion to reopen and thereafter a joint motion to reopen and reconsider. 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).

The Petitioner is a citizen and national of Nigeria who entered the United States as a nonimmigrant B-2 visitor in April 2016. The Petitioner married H-D-R-<sup>1</sup>, a U.S. citizen, in [ ] 2017 and filed the current VAWA petition based on that relationship. The Petitioner did not submit any evidence of the termination of her prior marriage, as required. In March 2021, the Director issued a request for evidence (RFE) seeking proof of the following: termination of her prior marriage, shared residence with H-D-R-, abuse or extreme cruelty by H-D-R-, her good moral character and good faith marriage. In August 2021, the Petitioner responded to the RFE,<sup>2</sup> and as evidence of the termination of her prior marriage to F-O- in Nigeria, the Petitioner submitted a Judgment of Dissolution from the [ ] [ ] Nigeria (Decree) indicating that the marriage was dissolved in [ ] 2016. The Petitioner claimed that she married F-O- in [ ] 2006 and got “legally divorced” in [ ] 2016. According to the Decree, the Customary Court granted the Petitioner custody of her minor child after making several attempts to contact the Petitioner.

In July 2022, the Director denied the VAWA petition after determining that the documentation contained irregularities and was not sufficient evidence of termination of the Petitioner’s prior marriage. The Director found that in light of the procedural irregularities in the Decree, the Petitioner did not demonstrate the lawful termination of her prior marriage before marrying H-D-R- as required. Thus, she could not establish the requisite qualifying relationship to a U.S. citizen. Specifically, the Director noted that it was unreasonable for the Customary Court to grant custody of a child born of the marriage, to the Petitioner when the Petitioner’s whereabouts were unknown.

In September 2022, a motion to reopen was denied by the Director reiterating that the procedural irregularities in the Decree such as the custody determination of the child, made the Decree unreliable evidence of the termination of the marriage. In May 2023, a subsequent joint motion to reopen and reconsider was denied by the Director. The Director acknowledged that the Petitioner submitted a September 2022 letter from the Registrar of the [ ] (Registrar) stating that the default judgement in the divorce suit was entered after a full hearing. But the Director determined that the position of ‘registrar’ did not exist within the Customary Court. Consequently, the Director concluded that the letter carried zero weight.

On appeal, the Petitioner submits the following new items: a brief, an affirmation from her attorney, Delta Airlines boarding pass and reservation for her attorney, a photograph of a door with the sign “Court Registrar Office,” May 2023 letter from the Registrar, and May 2023 letter from the Petitioner’s attorney to the Registrar. And a re-submitted September 2022 letter from the Registrar.

The Petitioner asserts that the position of “registrar” exists within the Customary Court, and it is synonymous with the word “clerk.” She further argues that in [ ], the use of the word “registrar” follows an age-long British tradition. The Petitioner’s attorney states that he travelled to Nigeria and met with the current Registrar and the Court Clerk, and he made visits/inquiries to other Customary Courts confirming that the administrative heads of each of the [ ] [ ] is called the Registrar and each one of them has an Office of the Registrar. The Petitioner argues that there is no court system without the position or office of the Registrar in the Nigerian legal system.

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<sup>1</sup> We use initials to protect the privacy of individuals.

<sup>2</sup> The Petitioner also submitted documentation in response to the Director’s request for the other evidentiary requirements.

Additionally, she asserts that the September 2022 letter constituted new evidence and was probative of the validity of the divorce, thus validating the Decree. Consequently, she argues, the Director should not have dismissed her joint motion to reopen and reconsider.

Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). When a petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by a petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). In this case, the record does not contain sufficient evidence to establish the requirements to obtain a customary divorce in [REDACTED]. We note that in Nigeria, marriage under native law and custom can only be dissolved by the customary court having jurisdiction over the area where the marriage took place. The record does not reflect that the marriage arose within the jurisdiction of the [REDACTED], so that this court would have authority to dissolve it. Evidence in the record indicates that the Petitioner was married in [REDACTED] but was purportedly divorced in [REDACTED]. Thus, this inconsistency on the face of the document supports the finding that the Decree is not authentic. USCIS is entitled to question the authenticity of any foreign document of record that is relied upon to establish a familial relationship. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent evidence.

The U.S. Department of State's Reciprocity Schedule for Nigeria (schedule) explains that there are a number of ways to terminate, and document the termination of, a customary marriage in Nigeria. <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html> (last visited Nov. 30, 2023). There is no legal requirement in Nigeria that a marriage be dissolved by a court or that the divorce be registered or documented. *Id.* Although the schedule does not mention the return of a dowry, it recognizes the return of the bride price to the bride or her family as a legal method of divorce. *Id.* A Customary Court or a Magistrate Court may also dissolve a marriage, even if one spouse is not present or does not know of the divorce. *Id.* Although dissolution may occur without any written record, the schedule states that documentation of a customary divorce may include the filing of an affidavit by one or both parties with a Customary Court or issuance of a divorce decree by the court. *Id.* Here, the Decree does not indicate that the Petitioner was ordered to return the dowry or the bride price. *See Ruth Levush, Customary Divorce in Nigeria* (September 1993), <https://tile.loc.gov/storage-services/service/II/IgIInd/2019670455/2019670455.pdf> [accessed November 30, 2023] (noting [ ] . . . it is the actual return of [the] bride price which makes the dissolution ordered by the court effective.). Therefore, the record indicates the Petitioner was still legally married to F-O-, her first spouse, because the marriage was not dissolved under Customary Law. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that the petitioner bears the burden to establish eligibility). Therefore, the Petitioner has not established she had a qualifying relationship as the spouse of a U.S. citizen.

With regard to the use of the term "registrar" in the Customary Court, either in the place of or in addition to the title "clerk", we note that the Petitioner submitted a letter from the Registrar and a close-up photograph of a door with the sign "Court Registrar Office." At the outset, we note that this sign appears to be superimposed on another sign. Regardless, we withdraw the Director's finding and agree with the Petitioner that the position of "registrar" exists within the Customary Court. However,

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 her 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, she also has not established that she is eligible for immediate relative classification based on such relationship.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>3</sup> We need not reach, and therefore reserve the remaining eligibility criteria for VAWA. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).