



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

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

In Re: 24584370

Date: FEB. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and we dismissed the Petitioner's subsequent appeal, concluding that the Petitioner did not establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates that they entered into the marriage with the U.S. 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 spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1). In addition, a petitioner must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1). Specifically, a 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). The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). While 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).

As discussed in our decision dismissing the Petitioner's appeal, the Director determined that the authenticity of the Petitioner's Decree Nisi of Dissolution and Certificate of Decree Absolute was questionable. Based on evidence in the record, the Director found that the Petitioner did not provide a Decree Nisi and Decree Absolute that was issued in accordance with procedures for dissolving a registry marriage as set forth in the U.S. Department of State's Reciprocity Schedule for Nigeria (schedule),¹ and therefore, the record did not establish the termination of the Petitioner's first marriage. Because the Petitioner did not establish that her first marriage was legally terminated, the Director concluded that she did not establish the validity of her subsequent 2016 marriage to K-B-G-, a U.S. citizen, and consequently, she did not establish a qualifying relationship with a U.S. citizen, or that she is eligible for immigrant classification based on that qualifying relationship, as required. On appeal, the Petitioner indicated for the first time that she had a customary marriage in Nigeria and argued that to dissolve a customary marriage, all that is required is the return of the bride price to the groom, which her family did after her former spouse initiated divorce proceedings. She also stated that she and her former spouse were unaware that their marriage dissolution documentation was fraudulent and submitted an affidavit from her former spouse wherein he asserted that he attempted to locate the solicitor who handled their divorce to no avail.

In our prior decision dismissing the Petitioner's appeal, incorporated here by reference, we determined that the Petitioner did not establish a qualifying marital relationship with a U.S. citizen based on her marriage to K-B-G-, as the evidence she provided before the Director and on appeal was not sufficient to establish the legal termination of her first marriage, as required. 8 C.F.R. § 204.2(c)(2)(ii). We specifically noted that the Petitioner did not indicate that her marriage was a customary marriage until she was confronted with the inconsistencies contained in the court documentation submitted as evidence of the dissolution of a registry marriage. We further noted that, while the Petitioner claimed, for the first time on appeal, that her customary marriage was dissolved upon the return of a bride price, consistent with Nigerian customary law requirements, her former spouse made no mention of the return of a bride price in his affidavit. As such, we determined that the Petitioner did not overcome the Director's finding that questioned the authenticity of the submitted court documentation and her new claim recharacterizing her marriage as a customary marriage (rather than a registry marriage) was not supported by a preponderance of the evidence, as required.

On this motion to reconsider, the Petitioner does not cite any error in our application of law or USCIS policy in our previous decision, nor has she established our prior decision was in error based on the record at the time. The Petitioner submits, on motion to reopen, a brief statement within the Form I-290B, Notice of Appeal or Motion, asserting that she is from a part of Nigeria where the culture performs both customary and registry marriages and, although it was discovered that the registry marriage was not properly dissolved when her former spouse filed for divorce, the marriage was also dissolved via customary rites. She also indicates that the revelation that her registry marriage was not properly dissolved prompted her to dissolve the marriage and file for divorce in the United States to correct the error. The Petitioner now submits a Final Decree of Divorce (divorce decree) from her first spouse, issued in [redacted] Texas in [redacted] 2022. The Petitioner does not submit any additional evidence in support of the combined motions.

¹ U.S. Department of State, *U.S. Visa: Reciprocity and Civil Documents by Country, Nigeria*, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html>.

The burden of proof is on the Petitioner to establish that she was not legally married to her first spouse at the time she married K-B-G-. Here, the record, including the new evidence and new facts asserted on motion, is not sufficient to satisfy her burden. The Petitioner concedes on motion that she and her former spouse also had a registry marriage in Nigeria, which can only be dissolved through a High Court, according to the Department of State visa reciprocity schedule and as explained in our prior decision. Consequently, regardless of whether the Petitioner's customary marriage to her first spouse in Nigeria was dissolved upon her family returning the bride price to him, the Petitioner has not demonstrated that the couple's registry marriage was legally dissolved through a High Court in Nigeria prior to her marriage to K-B-G-. We acknowledge the Petitioner's 2022 divorce decree from her first spouse that she now submits on motion; however, it does not establish the legal termination of her first marriage *before* her marriage to K-B-G- in 2016. Based on the evidence submitted, the Petitioner has not demonstrated, by a preponderance of the evidence, that she was free to legally marry K-B-G- in 2016, as the record indicates she was still legally married to her first spouse. Therefore, the Petitioner has not established she had a qualifying relationship as the spouse of a U.S. citizen.

Here, the Petitioner has not established legal or factual error in, and her new evidence on motion does not overcome, our prior decision, finding that she has not shown that she was free to legally marry K-B-G- in 2016. Accordingly, the Petitioner has not established a qualifying relationship with a U.S. citizen spouse based on that marriage and her corresponding eligibility for immediate relative classification based on that relationship. Sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.