U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25235086

Date: MAR. 17, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for 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 Petitioner's prior marriage had been terminated prior to his marriage to his U.S. citizen spouse. 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). *Id.* 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 last entered the United States as a visitor for pleasure in May 2015. Prior to entering the United States, the Petitioner claims to have divorced his

first spouse, F-O-[1], in either [redacted] of 2015.[2] The Petitioner married C-O-, a U.S. citizen, in [redacted] 2016 and divorced in [redacted] 2017. Subsequently, the Petitioner married J-A-, a U.S. citizen, in [redacted] 2017. The Petitioner filed the current VAWA petition in April 2019 based on claimed abuse by J-A-.

As initial evidence of the termination of his marriage to F-O-, the Petitioner provided a decree nisi and decree absolute from the High Court of [redacted] with an effective date of [redacted] 2015. The Director determined that the documents did not conform to the standards described in the Department of State reciprocity table for dissolution of a registry marriage and requested additional evidence of the termination of the Petitioner's marriage to F-O-. In response, the Petitioner claimed that his marriage to F-O- was an Islamic marriage and could only be dissolved through a customary court in [redacted] The Petitioner also submitted a Certificate of Divorce from the Upper Area Court of [redacted] an affidavit of authenticity from an unidentified signatory in the Upper Area Court [redacted] Judiciary, and a document issued by Upper Area Court of [redacted] for the dissolution of marriage. The Director denied the VAWA petition finding that the evidence of record did not establish that the Petitioner was legally free to marry J-A- and therefore could not establish a qualifying relationship under section 201(b)(2)(A)(i) of the Act.

Upon de novo review, we agree with the Director and find that the Petitioner has not provided sufficient evidence to establish that he was legally free to marry J-A- in [redacted] 2017. On appeal, the Petitioner submits a brief and copies of the same documents submitted in response to the RFE from the Director. The Petitioner continues to argue that his marriage to F-O- was conducted under Islamic law and therefore may only be dissolved by a customary court like the Upper Area Court of [redacted] However, inconsistencies in the record cast doubt upon the evidence submitted by the Petitioner. For example, the final judgement of divorce from [redacted] was pronounced with "The parties present in court" in [redacted] 2015, three months after the Petitioner had entered the U.S. as a visitor.[3] The Petitioner provided no explanation for how he was able to be physically present in [redacted] in [redacted] 2015 and the court does not state that he was otherwise represented by another individual such as a family member or attorney. Furthermore, the record did not contain any evidence of an Islamic marriage, and the Petitioner did not indicate that his marriage was an Islamic marriage until he was confronted with the inconsistencies contained in the decree nisi and decree absolute submitted as evidence of the dissolution of a registry marriage from the High Court of [redacted]

The Petitioner goes on to argue that the Hight Court of Nigeria does not have the authority to dissolve marriages concluded under Islamic law. However, both with the I-130 Petition for Alien Relative submitted by J-A- and with the initial VAWA petition, the Petitioner provided a decree nisi and a decree absolute from the High Court of [redacted] The Petitioner has provided no statement or explanation for the submission of the decree nisi and divorce absolute from a court which, by his own admission, did not have jurisdiction to dissolve the marriage. Moreover, the Petitioner has provided no personal statement to explain the circumstances of his divorce from F-O-, the process by which it was completed, or the customs observed in accordance with Islamic Law. Due to the inconsistencies

[1] We use initials to protect the privacy of individuals.
[2] The Decree Absolute from the High Court of [redacted] became final in [redacted] 2015. The dissolution of marriage from the Upper Area Court of [redacted] was pronounced final in [redacted] 2015.
[3] Records indicate the Petitioner entered the United States in May 2015 and first departed with advanced parole in March 2022, returning later that same month.

identified above and absent an explanation for the multiple divorce documents from different jurisdictions, we find that the Petitioner has not met his burden in establishing that his marriage to F-O- was properly terminated. *See Matter of Chawathe*, 25 I&N Dec. 369.

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.