U.S. Citizenship and Immigration Services

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

In Re: 19120670

Date: JUN. 28, 2022

Appeal of Vermont Service Center 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center initially approved the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), but subsequently revoked approval of the VAWA petition after concluding that the Petitioner did not establish that he had a qualifying relationship as the spouse of a U.S. citizen. The matter is now before us on appeal. On appeal, the Petitioner submits evidence and a brief asserting his eligibility. The Administrative Appeals Office reviews 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.

## I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The 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, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act. 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 self-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).

The Director may revoke the approval of any petition approved under section 204 of the Act, "at any time, for what [they] deem to be good and sufficient cause." Section 205 of the Act. The regulations provide for both automatic revocation and revocation upon notice to the petitioner "when the necessity for the revocation comes to the attention" of the Director. 8 C.F.R. § 205.1, 205.2.

## II. ANALYSIS

The Petitioner, a native and citizen of Kenya, entered the United States with a B-2 nonimmigrant visa in July 2003. The Petitioner married T-R-,[1] a U.S. citizen, in [redacted] 2010, and claimed to have resided with her from [redacted] 2010 to September 2016. The Petitioner filed his VAWA petition in February 2018 and the Director approved it in January 2020. The Director issued a notice of intent to revoke (NOIR) the VAWA petition in September 2020, noting that the record did not establish that the Petitioner was free to marry T-R and therefore did not have a qualifying relationship as the spouse of a U.S. citizen. The Director noted first that in his May 2004 asylum application, the Petitioner referenced marrying D-T- in Kenya in 1989, and he stated in his 2007 asylum interview that they had a customary marriage under Kenyan law. The Director therefore requested that the Petitioner submit evidence that his customary marriage to D-T- was legally terminated prior to his marriage to T-R-, as he would not have been free to marry T-R-. Second, the Petitioner married A-W- and the Director determined that his annulment in [redacted] 2010 to her was invalid, as it was filed in the wrong jurisdiction under Massachusetts law, and for this reason he would have also not been free to marry T-R-. Specifically, the Director stated that Massachusetts law provides that an annulment must be filed where one of the parties resides, and the Petitioner filed for annulment from A-W- in [redacted] County although he resided in [redacted] County and A-W-'s residence was listed as unknown on the judgment of annulment. The Petitioner did not respond to the NOIR. Therefore, the Director revoked approval of the VAWA petition as the Petitioner did not establish he was free to marry T-R- and as such, he did not have a qualifying relationship as the spouse of a U.S. citizen.

On appeal, the Petitioner admits he referenced his customary marriage to D-T- in his asylum application and interview. However, he asserts that his customary marriage in Kenya to D-T- was not a legal marriage and therefore he was free to marry T-R-. While the Director referenced Part II, Section 6(1) of the Kenyan Marriage Act of 2014 (Marriage Act) which recognizes marriages "in accordance with the customary rights relating to any of the communities in Kenya," the Petitioner asserts that the Director omitted exculpatory sections of the Marriage Act. Specifically, the Petitioner states that Part II, Section 3(1) of the Marriage Act defines marriage as "...union of a man and a woman...registered in accordance with this Act" and Part V, Section 44 provides that "[t]he parties to a customary marriage shall notify the Registrar of such marriage within three months of the completion of the relevant ceremonies or steps required to confer the status of marriage to the parties in the community concerned." Therefore, the Petitioner asserts that his statement in 2007 that he had "a customary marriage under Kenyan law and therefore [it was] not real" is consistent with the statute.

While we acknowledge the copy of the Marriage Act submitted by the Petitioner, it was not the law at the time he had his customary marriage to D-T, which is listed as 1989 in his asylum application. Prior to the passage of the Marriage Act, individuals were not required to register customary marriages in Kenya. *See Kenya: Comprehensive Marriage Law Enacted* (May 2, 2014), https://www.loc.gov/item/global-legal-monitor/2014-05-02/kenya-comprehensive-marriage-law-enacted/. The burden of proof is on the Petitioner to establish that he was not legally married to D-T- at the time he married T-R-. Based on the evidence submitted, the Petitioner has not met his burden and we will therefore not disturb the Director's finding that he was not free to legally marry T-R-, as he was legally married to D-T- and did not provide evidence that he divorced her prior to marrying T-R-. Therefore, the Petitioner has not established he had a qualifying relationship as the spouse of a U.S. citizen.

[1] We use initials to protect individual identities.

As we determined that the Petitioner has not established by a preponderance of the evidence that he was free to marry T-R-, we decline to reach and hereby reserve the Petitioner's arguments regarding whether his annulment with A-W- was valid. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 an applicant is otherwise ineligible).

## III. CONCLUSION

Upon a full review of the record, the Petitioner has not established he had a qualifying relationship as the spouse of a U.S. citizen and, accordingly, he has not overcome the Director's grounds for revocation of the VAWA petition. The appeal will be dismissed and approval of the VAWA petition shall remain revoked.

**ORDER:** The appeal is dismissed.