



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

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

In Re: 16896179

Date: MAR. 28, 2022

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 the Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 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 summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen and reconsider. We will grant the motions and remand the matter to the Director for the consideration of additional evidence.

**I. LAW**

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates 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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other 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 U.S. Citizenship and Immigration Services (USCIS) 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.*

## II. ANALYSIS

The record reflects that the Petitioner is a native and citizen of Ghana who entered the United States in 2011 with a B2 nonimmigrant visa, claims she married a U.S. citizen, D-O-A-,<sup>1</sup> in [ ] 2014, and that they resided together from [ ] 2014 until April 2017.<sup>2</sup> In February 2018 the Petitioner filed her VAWA petition with a personal affidavit, letters of support, a psychological evaluation, financial records, civil documents, and photographs. The Director denied the petition, finding that the Petitioner did not establish a qualifying relationship and that she was eligible for immigrant classification based on the qualifying relationship.

We summarily dismissed the Petitioner's appeal, finding that she did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision, and we noted that the Petitioner indicated a brief and additional evidence would be submitted within 30 calendar days but that no brief or additional evidence had been received. On motion the Petitioner contends that our dismissal was in error as she submitted a brief "multiple times" that USCIS failed to forward to our office. The record shows that on her Form I-290B, Notice of Appeal or Motion, appealing the Director's denial of her VAWA petition, the Petitioner indicated, "Basis of Appeal: USCIS erroneously denied Applicant's I-360 VAWA [*sic*] petition, not accepting the divorce documents from her first husband in Ghana as valid."

In denying the petition the Director determined that the Petitioner did not establish the dissolution of her prior marriage to E-A-A- in Ghana. The Director concluded that it was a customary marriage to be dissolved under the Matrimonial Causes Act of 1971 so valid documentation would include a decree issued by a high or district court along with a statutory declaration by family members. The Director cited the U.S. Department of State Visa Reciprocity and Civil Documents by Country website addressing divorce certificates.<sup>3</sup> The Director noted that the Petitioner submitted a Statutory Declaration from the brothers of the Petitioner and E-A-A- confirming the dissolution of marriage, but that she did not provide a decree issued by a high court or district court. The Director determined that statutory declarations on their own do not constitute proper documentation of the dissolution of a Ghanaian customary marriage, so evidence was insufficient to show that the Petitioner was free to marry D-O-A-, the marriage was therefore not valid at time of filing her petition, and she did not have a qualifying relationship with a U.S. citizen or lawful permanent resident.

In appealing the Director's decision, the Petitioner recounts that she was pregnant when she arrived in the United States in [ ] 2011, went into preterm labor and gave birth, and then extended her visa to allow the baby to get healthier. She contends that her spouse in Ghana initiated divorce proceedings according to Ghanaian custom and law, the marriage was terminated based on the testimony of the heads of each household, a divorce decree was issued [ ] 2012, and it as then filed with and stamped by the Superior Court of Ghana in the City of [ ] so complies with U.S. Department of State rules. The Petitioner asserts that the Board of Immigration Appeals (Board) decision in *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985) was modified that affidavits executed by

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

<sup>2</sup> A Form I-130, Petition for Alien Relative, filed on the Petitioner's behalf was denied in February 2016 with a finding that the couple failed to establish a *bona fide* marriage. In May 2017 the Board of Immigration Appeals dismissed a subsequent appeal, concurring with the finding.

<sup>3</sup> <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>

heads of household meet the evidentiary requirement and may be sufficient to establish a divorce. She maintains that a 1991 amendment to the Customary Marriage and Divorce Law of 1985 made it no longer compulsory to register a marriage contracted under customary law, and she cites the Board's decision in *Matter of Kodwo*, 24 I. & N. Dec. 479 (BIA 2008) to argue that as heads of the respective households the brothers' attestation was sufficient to serve as a divorce decree registered with the Superior Court of Judicature, High Court of Justice [redacted] Ghana, on [redacted] 2012.

In *Kodwo*, the Board recognized the amendment to Ghana's law that makes it no longer compulsory to register a marriage contracted under customary law and does not require Ghanaians to register divorce affidavits with court for the divorce to be valid but allows the head of family to declare the divorce final following the customary proceeding. The Board modified its decision in *Kumah* to "While a court order remains the preferred method of establishing the dissolution of a customary tribal marriage under Ghanaian law, affidavits executed by the heads of household, i.e., the fathers of the couple, that meet specified evidentiary requirements may be sufficient to establish a divorce for immigration purposes." In *Kodwo* the Board discussed the evidence and detail needed to prove the validity of a customary divorce and added, "We note, however, that in accordance with the Foreign Affairs Manual, the desirable proper documentation continues to be a court decree, both because customary divorce is more difficult to prove and because polygamous marriage is permissible under the customary law of some groups, but not under civil law." *Kodwo* at 482.

The U.S. Department of State reciprocity database, accessed March 28, 2022, provides that:

Documentation of the dissolution of a customary marriage is a decree, issued by a high court or district court, along with a statutory declaration by the couples' families, stating that the marriage in question was dissolved in accordance with customary law.

As evidence of divorce from her husband in Ghana, the Petitioner submitted a Statutory Declaration signed by her and her spouse's brothers. The top of the document is stamped In the Superior Court of Judicature, High Court of Justice, [redacted] Ghana, and at the bottom contains a notary public stamp next to the signatures of the brothers.

The record also contains an order by a district court in Ghana dissolving the Petitioner's marriage to her first husband. As it appears that the Director has not had opportunity to review this document, we will remand the matter to the Director to consider this evidence in the first instance and determine whether the Petitioner has satisfied the remaining eligibility requirements for immigrant classification under VAWA.

**ORDER:** The motions are granted and the matter is remanded for further consideration consistent with the foregoing analysis.