



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

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

In Re: 23925020

Date: JAN. 18, 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 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), concluding that the Petitioner did not establish a qualifying marital relationship with a U.S. citizen and her corresponding eligibility for immigrant classification based on that relationship. On appeal, the Petitioner submits a brief and additional evidence and asserts her eligibility. 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.

I. LAW

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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. 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).

II. ANALYSIS

The Petitioner, a citizen of Nigeria, entered the United States in September 2016 with a visitor visa. The Petitioner married R-M-,¹ a U.S. citizen, in [] 2017. The Petitioner filed the current VAWA petition in May 2019 based on her marriage with R-M-. The record establishes that the Petitioner has been married on two occasions and that the U.S. citizen spouse, R-M-, has been married on two occasions. The information provided on the petition indicated that the Petitioner divorced her first spouse, M-O-, in [] 2016.

As evidence of the termination of her previous marriage, the Petitioner submitted a copy of a Decree Nisi and Divorce Absolute from the High Court of [] in Nigeria. An overseas investigation established that the Decree Nisi and Divorce Absolute are not genuine documents registered with the appropriate authority in Nigeria. The Director denied the petition, concluding that the Petitioner had not established the legal termination of her marriage to M-O-, and as a result, the Petitioner did not establish a qualifying spousal relationship to a U.S. citizen, based on her subsequent marriage to R-M-, and corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act as the spouse of a U.S. citizen, as required under VAWA.

On appeal, the Petitioner asserts that the Department of State visa reciprocity table for Nigeria indicates that no documents are required in Nigeria to show dissolution of a customary marriage, and she therefore is not required to provide a divorce decree. In addition, the Petitioner claims that she was unaware that the divorce documents submitted with the petition were not authentic and maintains that she relied on the Nigerian attorney she hired to obtain a divorce for her in Nigeria and provide her with the divorce documents

The Department of State's reciprocity table identifies two different types of customary marriages in Nigeria: Islamic marriage and marriage under native law and custom. The Department of State's reciprocity table for Nigeria also provides the following information with respect to customary divorce in Nigeria:

1.) CUSTOMARY MARRIAGES: There is no legal requirement that a customary marriage should be dissolved by any court, nor any requirement that the divorce be registered or documented.

1.) a.) Marriage Under Native Law and Custom: *Traditional marriages are often dissolved without any written record.* One legal method of divorce involves the groom or his family returning the bride price to the bride or her family. *Divorces for some traditional marriages are documented by one or both parties filing an affidavit with a Customary Court.* Finally, traditional marriages may be formally dissolved by a Customary Court and a divorce decree issued by the court. Where there is no Customary Court in the area, a Magistrate Court may dissolve a customary marriage. The courts may dissolve a traditional marriage without one of the spouses being present or even knowing that the divorce took place.

¹ We use initials to protect the privacy of individuals.

Department of State, *U.S. Visa: Reciprocity and Civil Documents by Country, Nigeria*. <https://travel.state.gov/content.travel.us-visas/vids-reciprocity-and-civil-documents-by-country/Nigeria.html> (emphasis added).

The Petitioner provided documentary evidence to establish that she was in a customary marriage with M-O-. The record contains varying accounts of when the Petitioner's marriage with M-O- occurred. The Petitioner claims on filings with USCIS that the marriage began in [] 1997. The psychological evaluation submitted with the VAWA petition indicates the marriage with M-O- began in 1995. The affidavits provided from witnesses of the marriage indicate that the ceremony was held in 2005. Regardless of the actual date of inception, the record sufficiently established that a customary marriage occurred prior to her marriage with R-M-. Having established that a customary marriage occurred under Nigerian law, it is the Petitioner's burden to establish that the marriage was lawfully terminated before she married R-M-. *See Matter of Chawathe*, 25 I&N Dec. at 375.

We recognize the Petitioner's argument that primary evidence of divorce for a customary marriage in Nigeria may not exist. The Petitioner, nevertheless, affirmatively provided a divorce decree purporting to be from the [] as evidence of the lawful termination of her prior customary marriage. As previously discussed, the Divorce Absolute and Decree Nisi were found to be fraudulent documents. Moreover, although the visa reciprocity table indicates that there may be no written records for the dissolution of a customary marriage, in those cases where there are no official documents or records to establish the termination of a legally recognized customary marriage, petitioners must still establish that the requisite laws and customs were followed to dissolve the marriage. *See id.* The reciprocity table specifically describes various methods for the dissolution of customary marriages under Nigerian law, including formal dissolution by customary courts or by a Magistrate Court where no customary court exists, as well as other methods or processes under customary law. *See Department of State, U.S. Visa: Reciprocity and Civil Documents by Country, Nigeria, supra.*

Here, other than the fraudulent documents provided with the petition, the Petitioner has not provided any substantive evidence that her marriage to M-O- was, in fact, terminated under customary or any other applicable law in Nigeria. Additionally, apart from stating that the marriage had been terminated, the Petitioner, in her written statement submitted with her appeal, does not describe any divorce process or the relevant customs she followed to obtain a customary divorce. She only claims that she hired an attorney who provided her with the documents referenced above. Consequently, the Petitioner has not established that her marriage to M-O- was terminated under customary or any other applicable law in Nigeria.

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). As a result, the Petitioner has not met her burden of proof in establishing that her subsequent marriage to R-M- in [] 2017 was legally valid. The Petitioner, therefore, has not demonstrated by a preponderance of the evidence a qualifying marital relationship with a U.S. citizen spouse as required under VAWA. Because the Petitioner did not demonstrate the requisite qualifying marital relationship, she also did not establish that she is eligible for immediate relative classification based on such relationship.

ORDER: The appeal is dismissed.