U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27258633

Date: JUL. 6, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 had a qualifying relationship with her U.S. citizen spouse. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner argues that the evidence provided was sufficient to establish the termination of her prior marriage and that the Director erred by stating that New York law would not recognize her foreign divorce as valid.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in relevant part, that they have a qualifying relationship with their U.S. citizen spouse and 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), based on that relationship. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1). 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, a citizen and national of Nigeria, entered the United States in 2018 as a non-immigrant visitor. The Petitioner married her second spouse, K-K-[1], in [redacted] 2019 and filed the current VAWA petition based on that relationship. The Director denied the petition after determining that the Decree Nisi and Divorce Absolute from the High Court of [redacted] the Petitioner submitted did not generally conform to the standards for such documents and were not signed by the appropriate authority. Moreover, the Director stated that New York State law, generally, would not recognize the foreign divorce of individuals where one of the parties was not present in court for the divorce proceedings. On appeal, the Petitioner states that the Decree Nisi and Divorce Absolute are valid documents and sufficient to establish the termination of her marriage to B-O-, her prior spouse. The Petitioner further states that New York state law would recognize her divorce as a matter of comity. The record contains four documents provided by the Petitioner as evidence of the termination of her prior marriage. In the evidence before the Director, she provided a written agreement of divorce between her family and the family of her prior spouse as evidence of the termination of her customary marriage. Also, before the Director, she provided a Judgement of Divorce from the Customary Court of [redacted] finalized in [redacted] 2014. Lastly, on appeal, the Petitioner provides new certified copies of her Decree Nisi and Divorce Absolute from the High Court of [redacted] finalized in [redacted] of 2012 respectively.

Upon de novo review, we conclude that the Petitioner has, by a preponderance of the evidence, established the termination of her prior marriage to B-O- and that New York state law would, as a matter of comity, recognize her foreign divorce as valid. The Director stated that the divorce documents were questionable because a stamp was cut off and the signature was not from the appropriate authority. With the submission of new, certified copies of the Decree Nisi and Divorce Absolute, the Petitioner has resolved the issue regarding the identified deficiencies in the documents. The Director further stated that the Matrimonial Causes Act of 1970 only has one ground for divorce and that the stated ground of divorce on the Petitioner's Decree Nisi is not consistent with Nigerian law. In fact, Section 15 of the Matrimonial Causes Act of 1970 identifies eight grounds under which a marriage may be deemed to have "broken down irretrievably," including abandonment. Therefore, the reason for divorce stated on the Decree Nisi appears consistent with Nigerian law. The Department of State reciprocity table for Nigeria states that once a marriage has been registered with the appropriate authority it may only be resolved by the High Court. 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. Therefore, the new, certified copies of the Decree Nisi and Divorce Absolute from the High Court of [redacted] submitted on appeal establish, by a preponderance of the evidence, the termination of the Petitioner's marriage to B-O-. The submission of the customary court's decision to dissolve her marriage, which post-dates the High Court's decision, is surplus to the requirements outlined by the Department of State, and aligns with the description of events provided by the Petitioner on appeal. *Id.*

Since the Petitioner has established that her marriage was properly terminated under Nigerian law, we must now consider whether the divorce would be recognized by the state in which she remarried, in this case, New York. *See Matter of Ma*, 15 I&N Dec. 70 (BIA 1974). For New York, a foreign divorce will be recognized as a matter of comity if at least one party to the divorce is domiciled in the foreign country at the time of divorce proceedings and the divorce is not contrary to the public policy of the

[1] We use initials to protect the privacy of individuals.

State. *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983). As both the Petitioner and B-O- were residing in Nigeria at the time of their divorce, the divorce not appearing to be otherwise contrary to the public policy of the state, New York would recognize the Petitioner's divorce as valid.

The Petitioner has met her burden of proof in establishing the termination of her prior marriage, as required. Therefore, the Petitioner has established a qualifying relationship to a U.S. citizen as required under section 204(a)(1)(A)(iii)(II) of the Act. The matter is remanded to the Director for a determination of whether the Petitioner meets all other eligibility requirements for VAWA.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.