U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33710595

Date: SEP. 10, 2024

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 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), and the matter is before us on appeal. The Administrative Appeals Office (AAO) 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 the petitioner demonstrates that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also show that they were a bona fide spouse of a U.S. citizen within the past two years, 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). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any credible evidence relevant to the VAWA petition in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). 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).

II. ANALYSIS

The Director concluded that the Petitioner did not establish eligibility for immigrant classification pursuant to the VAWA because he did not demonstrate that he: had a qualifying relationship as the spouse of a U.S. citizen; and that he was eligible for immigrant classification based on that qualifying relationship. To demonstrate that he had divorced his prior spouse, the Petitioner submitted a translated document titled Divorce Certificate No. ____/2016[1] from the _____ Court of Appeal. The

[1] The Petitioner provided two different translations of his Divorce Certificate.

Director noted that the Petitioner's previous marriage was dissolved in Niger while he was residing in the United States, but the Divorce Certificate indicated that he "appeared" in Niger. The Petitioner explained that S-B-,[2] an attorney in Niger, represented him in the divorce, and the New York officiant accepted that he was free to marry. The Director noted that the Divorce Certificate stated that there were no children from the marriage, although the Petitioner admitted that the marriage produced one child. Furthermore, he claimed that S-B- advised him that he did not need to correct this misinformation. Regarding his B-2 visa application, the Petitioner claimed that he listed his first spouse as H-H- although the name M-A-T- appeared as his spouse. The Petitioner explained that "M-" was a "male name," he did not know why the name M-A-T- appeared on his B-2 visa application, and that H-H-'s mother's name was M-M-. However, the Director reasoned that the Petitioner may have married more than two times. Finally, the Director determined that the Divorce Certificate was not consistent with the document guidelines described on the Department of State's (DOS's) Reciprocity Schedule, nor had the Petitioner explained why it did not comply with the guidelines. *See* https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Niger.html.

Upon de novo review of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Petitioner submits H-H-'s birth certificate showing that her mother's name is M-M-. While we acknowledge H-H-'s birth certificate, this does not explain why M-A-T- was listed as his spouse on his B-2 application. Moreover, the Petitioner has not overcome the discrepancies in the Divorce Certificate. The Divorce Certificate does not comply with the DOS Reciprocity Schedule for Niger. Among other things, the DOS indicates that divorce documents must be issued by the [redacted] - Tribunal, Palais de Justice, and it is titled Extrait d'acte de divorce. The Petitioner has not sufficiently explained why his documentation departs from the norm. Moreover, although the Petitioner acknowledges that he has one child born of the marriage, the Divorce Certificate indicated that there were no children. While the Petititioner claims that S-B- refused to correct that error, we note however that the Petitioner did not list any children on his VAWA petition.

On appeal, the Petitioner argues that he was not present in Niger and that he was represented by his attorney S-B-. In claiming that the divorce is valid, the Petitioner proffers that in ". . . many divorces within New York State, where [the Petitioner] lives, plaintiffs and defendants enter their appearances in the litigation by submitting a written complaint or answer, without being physically present in court." However, the threshold issue is whether the divorce is valid in Niger, and if valid, whether it is recognized by New York. The validity of a marriage for immigration purposes is determined by the law of the place in which the marriage was celebrated. *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987). Where a spouse was previously divorced, the law of the state where the subsequent marriage occurred also governs the validity of the prior divorce for immigration

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

purposes. *Id.* The Petitioner submits an April 2024 letter in which S-B- attests that he was "acting as the agent representing [the Petitioner] . . . before the Court specially in charge of Civil, Commercial, and Customary Affairs" and that the Petititioner ". . . has not entered into a new marriage on Nigerien territory since the divorce decree." Notably, S-B- does not say that he represented the Petitioner in his capacity as an attorney but that he was "acting as the agent representing" the Petitioner. The first translation of the Divorce Certificate states the Petitioner is "represented by S-B- "following Power of Attorney" and in the second translation, the Petitioner is "represented by S-B- pursuant to a proxy." Therefore, the Petitioner must show that his divorce is valid in Niger although the Divorce Certificate is different from the document described by the DOS, and that New York recognizes Niger proxy divorces. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship, including the termination of all prior marriages. A marriage is valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983); *Matter of Weaver*, 16 I&N Dec. 730, 733 (BIA 1979). If the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact that a petitioner must prove by a preponderance of the evidence. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)); *see also Matter of Chawathe*, 25 I&N Dec. at 375 (holding that the petitioner bears the burden of demonstrating eligibility by a preponderance of the evidence as a general matter). On appeal, the Petitioner has not established that he had a qualifying relationship with a U.S. citizen such that he would be eligible for immigrant classification pursuant to the VAWA.[3]

ORDER: The appeal is dismissed.

[3] Because the Petitioner has not established that he had a qualifying relationship with a U.S. citizen or lawful permanent resident, which is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding whether he has otherwise established the remaining requirements for immigrant classification pursuant to the VAWA. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 a petitioner or applicant is otherwise ineligible).