U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-G-

DATE: NOV. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act), § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the Petitioner did not have a qualifying relationship with a U.S. citizen spouse. The Petitioner filed a timely appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

An alien whose relationship with an abusive U.S. citizen has ended may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which provides, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
>
> . . . .
>
> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

> (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who claims to have entered the U.S. in 1982. The Petitioner filed the Form I-360 on March 4, 2014. Her petition is based on her relationship with A-R-R-, a U.S. citizen, with whom she claims to have entered into a common law marital relationship in Colorado.

The Director issued a request for evidence (RFE) of the Petitioner's qualifying relationship with A-R-R- and her good moral character. The Director noted that, although the record contained some evidence that the Petitioner and A-R-R- held themselves out as a married couple while living in Nebraska, common law marriage is not recognized in Nebraska. Additionally, the Director indicated that, on a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, filed in Colorado in 1988, the Petitioner stated that she was "never married." The Petitioner responded to the RFE with additional evidence, asserting that she and A-R-R- were in a common law marriage in Colorado. The Director found the evidence insufficient to establish that the Petitioner was involved in a common law marriage with A-R-R- in Colorado. The Director denied the

Form I-360 on the ground that the Petitioner did not establish a qualifying marital relationship with A-R-R-.

We review these proceedings *de novo*. The evidence establishes that the Petitioner entered into a valid common law marriage in Colorado. The evidence also establishes that the Petitioner's common law marriage was considered valid in Nebraska, where she relocated with A-R-R- after their first few years of marriage in Colorado. However, we must dismiss the appeal because the Petitioner's common law marriage with A-R-R- terminated more than two years before she filed the Form I-360.

III. QUALIFYING RELATIONSHIP

A. Common Law Marriage in Colorado

The preponderance of the evidence establishes that the Petitioner entered into a valid common law marriage with A-R-R- in Colorado. In her brief on appeal, the Petitioner argues that she submitted sufficient evidence to establish that she was in a common law marriage with A-R-R- in Colorado. She states that she and A-R-R- demonstrated an intention to be spouses in Colorado by living together, consummating their marriage, having children together, holding themselves out as husband and wife to friends and family members, and planning to spend their lives together. Additionally, the Petitioner states that she frequently used A-R-R-'s last name while living in Colorado. The Petitioner claims that A-R-R- would not consent to a civil marriage ceremony because he believed that doing so would entitle the Petitioner to his property and would allow her to petition for immigration benefits. She adds that, when she completed a Form I-687 in Colorado in 1988, she indicated that she was not married because she "knew that she could not produce a marriage certificate to immigration." She contends that, despite her statement on the Form I-687 that she was not married, she and A-R-R- met the requirements in Colorado for a common law marriage. The Petitioner asserts that documents from her time living with A-R-R- in Nebraska do not indicate that she and A-R-R- were married because common law marriage is not recognized in Nebraska. She also asserts that the Director did not consider the difficulties the Petitioner faces, as an abused spouse who was isolated and controlled by A-R-R-, in obtaining documentary evidence of her common law marriage in Colorado. The Petitioner contends that the Director imposed an inappropriate burden of proof on the Petitioner by requiring a marriage certificate rather than accepting her credible evidence of common law marriage.

In her personal declaration submitted with the Form I-360, the Petitioner stated that she lived with A-R-R- "as husband and wife, as a couple" from August 1987 to June 2010. She recalled that she met A-R-R- during her birthday celebration on [redacted] 1987 in Colorado, and that they dated for four months before A-R-R- asked her to move in with him. She stated that she and A-R-R- had four children together. According to the Petitioner, A-R-R- introduced her to his family "as his wife." She recounted:

> He always told the neighbors, our friends, our families that we were married, it even bothered him if I forget [*sic*] to put his last name in any document. For example in

> the form that I filled when I visited the doctor or any other document. I told [A-R-R-] that if he was presenting me as his wife and now we are forming a family, that we should get married. [A-R-R-] told me no because I sometimes did not behaved [*sic*] well and that if we marry [*sic*] I was going to have more rights and he did not like that.

The Petitioner also indicated that A-R-R- did not allow her to work after she had children, but instead forced her to be a "housewife." She stated that, after she began attempts to separate from A-R-R- by seeking an order of protection and a custody agreement for her children, A-R-R- attempted to convince her to stay with him. She claimed that A-R-R- told her, "[W]e never had a honeymoon, lets [*sic*] go to I invite you." The Petitioner indicated that she and A-R-R- went on the "honeymoon," but that A-R-R- continued to be abusive during the trip.

In response to the RFE, the Petitioner submitted an additional personal declaration. She stated that, when she filed her Form I-687, a person who was not an attorney assisted in her in completing the form. The Petitioner indicated that she was not aware at that time that Colorado recognized common law marriage, so she believes that she told the person preparing the Form I-687 that she was not married. She noted that she completed the Form I-687 at the beginning of her long relationship with A-R-R-. With regard to her marriage to A-R-R-, the Petitioner claimed that A-R-R- refused to marry her in a civil or religious ceremony as a means of controlling her. She explained that A-R-R- believed that the Petitioner would apply for legal residency if they were married, and he wanted her to remain undocumented so that he could control her. However, according to the Petitioner, A-R-R- referred to her as his "'esposa' (wife)." The Petitioner asserted that "the term 'esposo' or 'esposa', which translate as husband and wife in English, are used when couples are married or partnered and living together, especially if they have children." She further claimed that A-R-R- became angry if she did not use his last name when signing documents, and that he forced her to use his last name on their children's birth certificates. The Petitioner declared:

> After having children and spending so much time together, we considered each other our "esposos" or husband and wife. This "marriage" started when we were living in Colorado. Our families and children were surprised to find out that we were never married in the court since we always referred to each other as husband and wife and everyone knew us to be husband and wife. That is why I referred to him as my ex-husband while talking to the police, because he was my "ex-esposo."

The Petitioner also submitted supporting statements from family members and friends. The Petitioner's daughter, stated in a letter submitted in response to the RFE that she was surprised to learn that her parents were never married in a wedding ceremony. She stated that the Petitioner always used A-R-R-'s last name, including on school documents and on the birth certificates of and her siblings. The Petitioner's son, indicated that, "From memory and family stories [his] parents have lived together as a couple since Fall of 1987." A former neighbor of the Petitioner's, stated that she witnessed the Petitioner's "bruises and lesions after her husband [A-R-R-] had beat her," and that the Petitioner returned "to her

husband" after abusive incidents. A friend, attested that she knew that the Petitioner "was married to [A-R-R-]" and that the Petitioner's "husband" was abusive.

On appeal, the Petitioner submits additional supporting statements. asserts that he knew the Petitioner when she was a member of the Church of Jesus Christ of Latter-day Saints in Colorado. states that the Petitioner left Colorado when she "met and married [A-R-R-]." also indicates that she knew the Petitioner through church in Colorado, and that she became concerned when the Petitioner stopped attending church meetings. According to she learned through the Petitioner's family that the Petitioner "had married a man with different believes [*sic*] who made her leave the church." A former neighbor, , claims that the Petitioner "was a couple with [A-R-R-]" and that she knew them very well. recalls that she was aware of difficulties the Petitioner "had with her husband."

On the birth certificates of born in Colorado on 1989, and born in Colorado on 1990, the Petitioner used A-R-R-'s last name and listed as her maiden name. She did the same on the birth certificate of , born in Nebraska on 1992. The Petitioner also submitted several photographs of herself and A-R-R- with their children, including a formal family portrait. These photographs support the Petitioner's claim that she and A-R-R- lived with their children in a marital, family relationship.

The Board of Immigration Appeals (BIA) has determined that "the validity of a marriage is determined according to the law of the place of celebration." *Matter of Gamero*, 14 I&N Dec. 674 (BIA 1974). Colorado recognizes marriages contracted without formal ceremony, or common law marriages. Section 14-2-104(3) of the Colorado Revised Statutes provides that "[n]othing in this section shall be deemed to repeal or render invalid any otherwise valid common law marriage between one man and one woman." Colorado case law similarly provides that "[u]pon dissolution of a subsisting marriage, an intended marriage contracted in good faith by a party thereto prior to the removal of the disability is rendered valid and binding by the continued cohabitation of the parties to such union, as the original intention to become husband and wife is presumed to continue so as to effectuate a common-law marriage." *Davis v. People*, 264 P. 658, 659 (1928) (citations omitted).

In *People v. Lucero*, the Supreme Court of Colorado determined that "[a] common law marriage occurs where the parties consent to be husband and wife and there is a mutual and open assumption of a marital relationship." 747 P.2d 660, 663 (Colo. 1987). The court stated that conduct in the form of mutual public acknowledgment of the marital relationship is essential to establish a common law marriage. *Id.* at 663-64. The court noted that, for purposes of proving common law marriage, the parties' consent may be proven by, or presumed from, evidence of cohabitation as husband and wife and general repute as husband and wife. *Id.* at 664-65.

The evidence of record, when considered in the aggregate, demonstrates that the Petitioner and A-R-R- were in a common law marital relationship in Colorado. The Petitioner resided with A-R-R- in Colorado for a short time between 1987 and 1990, and she was subjected to abuse and control by A-R-R- during that time. Therefore, the evidence available to her from that period is limited.

However, the available evidence demonstrates that the Petitioner and A-R-R- had a "mutual and open assumption of a marital relationship" and "general repute as husband and wife." 747 P.2d at 663, 664-65. The Petitioner's own declarations, which are detailed, probative, and credible, establish that she and A-R-R- referred to each other as "spouses" or "husband and wife," considered themselves to be married, and presented themselves as married to their family, friends, and community. The Petitioner credibly explains that the only reason they did not formalize their marital relationship through a civil or religious ceremony was that A-R-R- refused to do so as a method of controlling and abusing the Petitioner. The supporting declarations in the record also indicate that the Petitioner's friends and family members, including her children, believed that the Petitioner and A-R-R- were married. Although the Petitioner's children were very young when the family lived in Colorado, their assertions that they were surprised to learn that their parents were not married support a finding that the Petitioner and A-R-R- lived together as spouses and presented themselves as such throughout the entire length of their long relationship and throughout their children's lives. Furthermore, the Petitioner's friends, neighbors, and fellow church members from when they lived in Colorado believed that the Petitioner had married A-R-R- and that A-R-R- was her husband.

The evidence also indicates that the Petitioner used A-R-R-'s last name on official documents, including the birth certificates of their two children born in Colorado. This suggests that the Petitioner considered herself to be the wife of A-R-R-. Although the Petitioner indicated on her Form I-687 that she was not married, the Petitioner credibly explained that her response on that form was due to her belief that she would need to submit a marriage certificate to U.S. immigration authorities if she claimed to be married. The Petitioner's statement on the Form I-687, submitted approximately one year after she met A-R-R- and filed with the assistance of a non-attorney, does not negate the other credible evidence that the Petitioner and A-R-R- considered themselves to be in a marital relationship. This is especially so when considered in light of the environment of severe abuse and control in which the Petitioner lived; the Petitioner lacked authority to determine the nature of her relationship with A-R-R-, and some uncertainty about the legal validity of the relationship is understandable in that context. Therefore, the evidence supports a finding that the Petitioner and A-R-R- were in a common law marriage in Colorado.

B. Common Law Marriage in Nebraska

Although the Petitioner had a common law marriage with A-R-R- in Colorado, pursuant to 8 C.F.R. § 204.2(c)(1)(ii), a "self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended . . . before that time." Under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, a petitioner whose marriage with an abusive U.S. citizen spouse legally terminated may still file a Form I-360 if the marriage ended within the past two years and the petitioner demonstrates a connection between the termination of the marriage and battery or extreme cruelty by the U.S. citizen spouse.

The Petitioner entered into common law marriage with A-R-R- in Colorado, where she resided with him from 1987 to 1990, and the couple and their children then moved to Nebraska. The Petitioner filed the Form I-360 on March 4, 2014. Therefore, the Petitioner's common law marriage, which was

established in Colorado, must also be considered valid in Nebraska, and must not have terminated more than two years prior to her filing the Form I-360. Nebraska law indicates that the Petitioner's common law marriage was valid in that state. However, the Petitioner stated in her declaration that her relationship with A-R-R- ended in June 2010, nearly four years before she filed the Form I-360.

Nebraska has not recognized common law marriages created in that state since 1923. Section 42-104, R.R.S. 1943; *Abramson v. Abramson*, 161 Neb. 782, 786-87 (1956). However, pursuant to Nebraska statute, "all marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state." Neb. Rev. Stat. § 42-117. According to the Nebraska Attorney General, "Despite the use of the term 'country' in this statute, it has historically been applied to marriages contracted in other states as well." Neb. Op. Atty. Gen. No. 96025 (Neb. A.G.), 1996 WL 132907. Additionally, the Nebraska Supreme Court stated, "The general rule is that the validity of a marriage is determined by the law of the place where it was contracted; if valid there it will be held valid everywhere, and conversely if invalid by the lex loci contractus, it will be invalid wherever the question may arise." *Forshay v. Johnston*, 144 Neb. 525, 13 N.W.2d 874 (1944). In *Abramson v. Abramson*, the court indicated that, if a valid common law marriage had been entered into in Iowa pursuant to the laws of that state, it would be valid in Nebraska. 161 Neb. at 786-87. Similarly, in *Bourelle v. Soo-Crete, Inc.*, 165 Neb. 731, 741-43 (1958), the court found a common law marriage to have been legally created in Iowa while the parties resided there, and therefore concluded that the parties had a valid marriage in Nebraska. In *In re Binger's Estate*, 158 Neb. 444, 450 (1954), the court considered a claim that a common law marriage had been created in Colorado. The court found that the parties had not established a valid common law marriage in Colorado because they were residents of Nebraska and only visited Colorado at the time the claimed marriage occurred. However, the court also noted that common law marriages created in Colorado have been recognized in Nebraska where the parties "lived in and were bona fide residents of Colorado where as such they, in good faith, intending to be married, continuously cohabited, and held themselves out as husband and wife in that state for long periods of time." 158 Neb. at 452.

Furthermore, the behavior and statements of the Petitioner and A-R-R- while living in Nebraska are representative of the nature of their relationship throughout its entire duration. The Nebraska Supreme Court stated in *Abramson* that "evidence relating to the relationship of the parties in Nebraska was competent, not as tending to show a relationship entered into between the parties in Nebraska but as bearing upon and explanatory of what had preceded that time." 161 Neb. at 798 (citing *In re Estate of Wittick*, 164 Iowa 485 (1914)). After moving from Colorado to Nebraska, the Petitioner and A-R-R- continued to reside together in a marital relationship for approximately 19 years. They continued to present themselves as married spouses to their family and community, had two additional children, and went on a "honeymoon." When the Petitioner called the police in [redacted] Nebraska on [redacted] 2011, regarding A-R-R-'s violation of a protection order, she referred to A-R-R- as her "ex-husband." Although the Petitioner used her maiden name on many, but not all, documents while living in Nebraska, this is reflective of uncertainty regarding the legality of her relationship with A-R-R-. Furthermore, the Petitioner used A-R-R-'s last name on certain important documents while in Nebraska, including the birth certificate of her daughter, [redacted], born in 1992.

This indicates that, after moving from Colorado to Nebraska, the Petitioner continued to consider herself married to A-R-R-.

Nevertheless, the Petitioner's common law marriage with A-R-R- terminated in 2010, which is when, by the Petitioner's own admission, her relationship with A-R-R- ended which is more than two years before she filed the Form I-360 on March 4, 2014. Therefore, pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, she is not a spouse of a U.S. citizen. Accordingly, the Petitioner has not established that she has a qualifying relationship with a U.S. citizen, and she is not eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369. Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-G-*, ID# 14782 (AAO Nov. 16, 2015)