



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

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

MATTER OF B-N-T-

DATE: OCT. 20, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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* 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, Vermont Service Center, revoked approval of the Petitioner's Form I-360 based on a finding that his first marriage was not legally terminated, and that, therefore, he was not free to enter into marriage with his abusive U.S. citizen spouse. The Petitioner filed motions to reopen and reconsider the Director's decision. The Director granted the motion to reopen but denied the motion to reconsider and affirmed the earlier decision to revoke. The Petitioner appealed that decision to the AAO. In a decision dated July 7, 2015, we summarily dismissed the Petitioner's appeal on the ground that he did not submit a brief or evidence explaining the basis for his appeal. After we issued our decision, we received a copy of a brief the Petitioner submitted to the Vermont Service Center on April 20, 2015. Although the Petitioner did not follow the instructions on the Form I-290B, Notice of Appeal or Motion, to file any subsequent brief or evidence directly with the AAO, he filed his brief with U.S. Citizenship and Immigration Services (USCIS) prior to the issuance of our decision. Therefore, we will reopen the matter *sua sponte* to consider the Petitioner's appeal. However, the appeal will be dismissed.

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

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evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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.

(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 last entered the United States on February 26, 2003 as a B-2 nonimmigrant visitor. He married E-R-¹ a U.S. citizen, on [REDACTED] 2003 in [REDACTED] Colorado. E-R- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on November 3, 2003. The Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on the same date. On February 22, 2006, USCIS issued a notice of intent to deny (NOID) the Form I-130 on the ground that the Petitioner indicated on his Nonimmigrant Visa (NIV) Application, filed May 12, 2002, that he was married, but he did not reveal this marriage on the Form I-130 and did not submit evidence that the marriage was legally terminated before he married E-R-. The Petitioner responded with an affidavit and additional evidence. The Form I-130 was later denied because the Petitioner and E-R- did not appear for a scheduled interview with USCIS. The Petitioner's Form I-485 was denied on August 1, 2006 based on

¹ Name withheld to protect the individual's identity.

a finding that he willfully misrepresented a material fact by stating on his Form I-485 and accompanying Form G-325A that he had not been married prior to marrying E-R-.

The Petitioner filed the Form I-360 on July 2, 2007, and the Director approved it on August 13, 2008. However, the Director issued a notice of intent to revoke (NOIR) on February 4, 2014, in light of evidence that, on the Petitioner's NIV Application filed on May 12, 2002, the Petitioner indicated that he was married to another woman, F-A-,² in Ghana, and that the death certificate he submitted for F-A- had not been registered with the births and deaths registry in Ghana. The Director revoked approval of the Form I-360 on July 18, 2014. The Petitioner filed a motion to reconsider. In a decision dated January 30, 2015, the Director granted the motion to reconsider but affirmed the revocation of the petition.

III. QUALIFYING RELATIONSHIP

The preponderance of the evidence does not establish that the Petitioner has a qualifying relationship with his U.S. citizen spouse. The evidence demonstrates that the Petitioner was married to F-A- in Ghana, and the Petitioner has not established that the death certificate he submitted for F-A- is genuine.

In his appeal brief, the Petitioner argued that the Director erred in revoking approval of his petition. The Petitioner alleged that the Director violated USCIS policy by revoking based on evidence that was available at the time of the approval of the petition. The Petitioner contended that, according to USCIS Policy Memorandum PM-602-0022, *Revocation of VAWA-Based Self-Petitions (Forms I-360)*, Dec. 15, 2010,³ the Director cannot revoke a petition unless it is based on "new evidence not available at the time the Form I-360 was approved by the [Vermont Service Center]." The Petitioner's allegation that the Director violated USCIS policy is without merit. The Policy Memorandum emphasizes that the Vermont Service Center (VSC), not USCIS field office staff, has "sole authority to revoke an approved VAWA self-petition." The Policy Memorandum discusses the procedure for USCIS field office staff to request review of an approved Form I-360 by the VSC. The Policy Memorandum includes the following guidance: "All requests must be accompanied by a memorandum explaining the new evidence and its impact on the adjudication of the self-petition [T]he VSC will not accept any requests for review that do not follow the instructions" The evidence indicates that the Director accepted a request from a USCIS field office to review the approval of the Petitioner's Form I-360 due to new evidence that arose during an investigation in Ghana regarding the death certificate the Petitioner presented for F-A-. The record does not show that the Director violated USCIS policy in reviewing and ultimately revoking approval of the Form I-360. Furthermore, the Policy Memorandum states that "[i]t is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by

² Name withheld to protect the individual's identity.

³ The Petitioner cited a draft version of this memorandum, which did not constitute USCIS policy, dated September 20, 2010. The final version of the memorandum was issued December 15, 2010.

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any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.”

The Petitioner also argued on appeal that he was not married to F-A- under Ghanaian law. He stated that, although the Director found that the Petitioner was in a customary marriage with F-A-, the customary marriage was not registered pursuant to the law in Ghana. Additionally, the Petitioner alleged that F-A- was residing with another man at the time of the alleged marriage and that polygamy is not permitted under the civil law of Ghana. He also noted that polygamous marriages are not recognized under the guidelines of the U.S. Department of State Foreign Affairs Manual, even if they are legal in the place the marriages were celebrated. The Petitioner contended that, although he indicated in his NIV Application that he was married to F-A-, he later “recanted and explained” that statement.

The relevant evidence in the record shows that the Petitioner was in a customary marriage to F-A-. In his NIV Application, filed May 12, 2002, the Petitioner indicated that he was married. On February 22, 2006, USCIS notified E-R- of its intent to deny the Form I-130 she filed on the Petitioner’s behalf. The NOID stated that, contrary to the Petitioner’s statement on his NIV that he was married, the Form I-130 indicated that the Petitioner had not been married before marrying E-R-. Furthermore, the NOID noted that, during an interview relating to the Form I-130, the Petitioner stated under oath that he had no prior spouses. In response to the NOID, the Petitioner submitted a sworn personal affidavit in which he stated that he lived with his girlfriend in Ghana but was not legally married to her. He stated that an agency assisted him with completing his NIV Application and that, because he resided with his girlfriend, the agency believed that he was married. According to the Petitioner, he was not married to his girlfriend in the “legal sense.” However, he stated that “if you are living with your girl friend [*sic*] in our culture the society can and does consider that you are married. Both of our parents considered us to be married.” He further stated that, after his girlfriend had an affair, she moved out and the Petitioner “no longer considered [him]self to be married to her, even culturally.” Additionally, the Petitioner submitted a death certificate for F-A- and noted that the certificate “lists [him] as her husband, as a result of [their] cultural marriage.”

Despite the Petitioner’s claims that the agency which assisted him with his NIV Application mistakenly listed him as married, the Petitioner also indicated in his own sworn statement that he was involved in a customary marriage with F-A-, that their society and families considered them married, and that he considered himself to be “culturally” married to her until she moved out of their shared home. Furthermore, the Petitioner indicated in other filings with USCIS that he was married to F-A-. In a Form G-325A dated November 20, 2009, and submitted in conjunction with a Form I-485, the Petitioner listed F-A- as his former wife. In the box regarding the date and place of marriage, he entered, “COMMON LAW.” The Petitioner’s former counsel, [REDACTED] also submitted a sworn affidavit on the Petitioner’s behalf, dated April 6, 2012, in which he stated, in part, that he traveled to Ghana “to verify that [the Petitioner] was married by customary marriage to [F-A-]” [REDACTED] included with his affidavit a sworn affidavit from [REDACTED]

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█ F-A-'s uncle, who stated that the Petitioner "was the spouse of [F-A-] by Customary Marriage at the time of her death"

The evidence does not establish that the Petitioner was required to register his customary marriage to F-A- in order for it to qualify as a marriage under Ghanaian law. According to the Department of State Reciprocity Schedule, most marriages in Ghana occur "under customary law, and written records are kept only if the couple chooses to register the marriage with the local council." In light of this information, the statements of the Petitioner and his supporting affiants indicate that he was involved in a customary marriage with F-A-.

Additionally, the Petitioner has not demonstrated that his marriage to F-A- was polygamous. The Petitioner has not provided evidence to support his claim that F-A- was residing with another man at the time of the customary marriage. Furthermore, even if F-A- were residing with another man, the record does not establish that she was married to that person or that her residence with another man prevented her from being in a customary marriage with the Petitioner.

The Petitioner also asserted on appeal that, even if he were married to F-A-, that marriage terminated with the death of F-A-, as documented on the death certificate he submitted. He contended that the Director should not have relied on the results of a USCIS investigation, which concluded that the death certificate was not registered with the Births and Deaths Registry in █ Ghana, because the death certificate itself indicated that it was registered. The Petitioner further argued that he submitted documentation supporting the death certificate in the form of a medical certificate listing F-A-'s cause of death. Moreover, the Petitioner contended that details regarding the "basis and process" for the USCIS investigation of the death certificate were not disclosed to the Petitioner, nor did he receive a copy of the report. He alleged that the Director's reliance on the investigation report without providing the Petitioner an opportunity to review and rebut it was a violation of due process.

The Petitioner did not reveal his marriage to, or the alleged death of, F-A- until the issue arose in the NOID relating to the Form I-130 that E-R- filed on the Petitioner's behalf. In response to the NOID, the Petitioner submitted a death certificate for F-A- which indicated that the Petitioner registered F-A-'s death with the Registrar of Deaths in █ Registration District, Ghana, on March 17, 2003. However, the Petitioner last entered the United States on February 26, 2003. The Petitioner has not credibly explained why he was listed as the informant when he was not in Ghana on the date listed.

█, previous counsel for the Petitioner, submitted a second death certificate for F-A- in 2012, and the Petitioner resubmitted a copy of that death certificate on appeal. The second death certificate differed from the first death certificate in several substantive ways. Although the first death certificate did not list a cause of death, the second death certificate stated that F-A- died of pneumonia. Additionally, the first death certificate indicated that the Petitioner reported the death, and that he was F-A-'s husband, but the second death certificate listed █ F-A-'s uncle, as the informant. Furthermore, the certification at the bottom of the first death certificate stated that it was a true copy of an entry in the Register of Deaths for █ in the █ Registration

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District. By contrast, the certification at the bottom of the second death certificate stated that it was a true copy of an entry in the Register of Deaths for [REDACTED] in the [REDACTED]. The Petitioner has not provided sufficient explanations for these differences.

If a decision to deny a petition is based on derogatory information considered by USCIS and of which the applicant or petitioner is unaware, the petitioner “shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered” 8 C.F.R. § 103.2(b)(16)(i). There is no requirement that USCIS provide documentary proof of the derogatory information to the Petitioner. The Petitioner was notified of the derogatory information relating to the authenticity of the first death certificate he submitted. On February 4, 2014, the Director issued a NOIR the approval of the Petitioner’s Form I-360. The Director noted that the evidence indicated that the Petitioner was married to F-A-. The Director also notified the Petitioner that a USCIS investigation regarding the first death certificate the Petitioner submitted for F-A- “revealed this alleged death certificate was never registered with the Births and Deaths Registry in [REDACTED].”

Furthermore, regardless of the results of the investigation, the Petitioner has not provided credible explanations for the problems with either death certificate he submitted, including the substantive differences between the two certificates and the fact that his name appeared as the informant on the first death certificate while he was in the United States. The fact that the death certificates themselves state that they were registered does not overcome the indications that the certificates are not valid. Although the Petitioner also submitted on appeal a Medical Certificate of Cause of Death for F-A-, this document does not establish the authenticity of the death certificates. Therefore, the relevant, credible evidence in the record does not establish that the Petitioner’s marriage to F-A- was legally terminated before he married E-R-. As a result, the Petitioner has not established a qualifying relationship with a U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II) 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 B-N-T-*, ID# 13609 (AAO Oct. 20, 2015)