



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

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

MATTER OF H-

DATE: JULY 22, 2016

MOTION ON 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* 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, Vermont Service Center, dismissed the petition. The Director concluded that the Petitioner had not shown he was divorced from his prior spouse and therefore had not established that he had a qualifying relationship with a U.S. citizen or the corresponding eligibility for immigrant classification based on such a relationship. The Director further found that the Petitioner failed to establish that he entered into his marriage in good faith, or that he was subjected to battery or extreme cruelty during that marriage. The Petitioner filed a timely appeal. We dismissed the appeal, finding that although the Petitioner established that he was subjected to battery or extreme cruelty, he had not established that he had a qualifying relationship and the corresponding eligibility for immigrant classification, or that he married his wife in good faith.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that he was in fact divorced from his first wife, that he had a qualifying relationship with his U.S. citizen wife, and that he married her in good faith.

We will deny the motion to reopen and the motion to reconsider.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

(b)(6)

Matter of H-

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the grounds for our previous denial. The Petitioner has not established that our prior decision was based on an incorrect application of law of policy, nor that our decision was incorrect based on the evidence of record at the time of the initial decision. However, the Applicant has provided additional documentary evidence in the form of a new affidavit on motion and a copy of an article regarding a judicial workers' strike in Nigeria.

A. Qualifying Relationship and Corresponding Immigrant Classification

The Petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and that he is eligible for immigrant relative classification based on such a qualifying relationship. In our prior decision, incorporated here by reference, we explained that the Petitioner did not show that he was legally divorced from his first spouse, and therefore he did not establish that he was legally free to marry his U.S. citizen spouse, Y-S-¹ and that his marriage to her was valid.

In his brief on motion, the Petitioner's Counsel asserts that the Petitioner "is completely baffled and disagrees" that the divorce certificate he submitted is a forgery, and that he was informed by an employee of the customary court that the divorce was registered. He also seeks additional time to file evidence from the said employee, and claims that he has been unable to obtain evidence because of a judicial workers' strike in Nigeria. However, the Petitioner did not submit any evidence to support these claims, nor did he mention the divorce decree or any conversations with a court employee in his affidavit submitted on motion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the judicial workers' strike ended on July 6, 2015, and we have received no further evidence from the Petitioner. *See* [REDACTED] (July 6, 2015), [REDACTED] (last visited July 5, 2016).

The Petitioner's Counsel further contends that the divorce proceedings in the customary court were a formality since the marriage itself had been dissolved according to the [REDACTED] customs and traditions by the families of both parties. However, the Petitioner did not provide evidence to show that a customary dissolution by the families, without a legitimate decree from a customary court, would suffice to legally terminate the marriage. Additionally, the Petitioner did not provide evidence that the marriage was dissolved according to the [REDACTED] customs and traditions. *See Matter of Obaigbena*,

¹ Name withheld to protect the individual's identity.

(b)(6)

Matter of H-

Matter of Laureano, and Matter of Ramirez-Sanchez, supra (the unsupported assertions of counsel do not constitute evidence).

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires proof of the termination of the self-petitioner's prior marriage. The Petitioner has not overcome our finding that the divorce decree he submitted is fraudulent, and he has not submitted any other evidence of the legal termination of his prior marriage. Consequently, the Petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act.

B. Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the Petitioner has not demonstrated that he had a qualifying relationship with his U.S. citizen spouse. He consequently has also failed to establish that he is eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

C. Entry into the Marriage in Good Faith

On motion, the Petitioner has not overcome our determination, as stated in our prior opinion, that he has not established good-faith entry into his marriage because the Petitioner and his friends' statements submitted below did not provide sufficient detail about his and Y-S-'s courtship, engagement, wedding, joint residence, and shared marital experiences. On motion, the Petitioner submits another personal statement which contains some additional details. The Petitioner states that he met Y-S- at a convenience store in 2004 when she was behind him in line. They started talking and exchanged numbers. He claims that they communicated a lot and that he thought she was beautiful, "giggly," hard-working, and a good mother. He indicates that he lost touch with her, and that in 2006 when he ran into her at a [REDACTED] where she worked, they went on their first date to a movie that night. He states that on their second date they went to [REDACTED] and that he met her sons. He recalls that they continued to see each other and became intimate three weeks later. He claims that he then moved back to Italy, and did not return until February of 2007 because he wanted to be with Y-S. The Petitioner states that after he came back to the United States, he spent some nights at Y-S-'s apartment and introduced her to his sister. He indicates that he proposed by hiding her engagement ring in a gift and that they were married. He states generally that they settled down as husband and wife, that they shared chores and bills, and that they "went out to different places and functions together."

On motion, the Petitioner still lacks sufficient probative details regarding his and his wife's courtship, engagement, wedding, joint residence, or any of their shared experiences and instead introduces several inconsistencies. On motion, the Petitioner indicates that he met his wife in 2004 while standing in line at a store. In his previous statement dated December 22, 2013, he stated that he met her at [REDACTED] in 2006. In his statement on motion, the Petitioner says that on the night he ran into Y-S- at [REDACTED] they went on their first date to see a movie. In contrast, in his previous statement, the

Matter of H-

Petitioner indicated that when he met Y-S- at [REDACTED] he “would go there to read the paper” and realized that she liked him because she would come to his table and engage in conversation. The Petitioner does not explain the discrepancies between his statements.

On motion, the Petitioner also notes that Congress enacted a “lower standard” of any credible evidence for VAWA petitions. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). However, this evidentiary standard is not equivalent to the petitioner’s burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. But, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

In this case, the testimonial evidence submitted does not demonstrate the Petitioner’s entry into his marriage in good faith. The Petitioner has not submitted a probative, detailed account of his intentions in marrying Y-S- and their relationship. Based on the insufficiency of the Petitioner’s and his friends’ brief statements alone, the Petitioner has not sustained his burden of proof in this matter. In addition to the insufficiency, however, the Petitioner has provided conflicting information about the circumstances surrounding when and where he met Y-S- and began their courtship. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the Petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

III. CONCLUSION

On motion, the Petitioner has not established that he entered into marriage with his spouse in good faith, that he had a qualifying relationship with his spouse, or that he is eligible for immediate relative classification based on that relationship. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-*, ID# 17384 (AAO July 22, 2016)