



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

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

MATTER OF Y-G-

DATE: JUNE 21, 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, denied the petition. The Director concluded that the evidence was insufficient to establish that the Petitioner had a qualifying relationship with her common law spouse, a U.S. citizen. On appeal, the Petitioner claimed that she entered into a common law marital relationship with her U.S. citizen spouse in a state that allows common law marriage. We dismissed the appeal. We concluded that the Petitioner had a common law marriage with a U.S. citizen and that the relationship remained viable when she moved to a state that does not allow common law marriage. We determined, however, that the marriage was terminated more than two years before the Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), and Special Immigrant (VAWA petition), and accordingly the Petitioner did not have a qualifying relationship with a U.S. citizen spouse.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that she did not divorce her husband, and that she had a qualifying relationship with her spouse when she filed the petition.

Upon review, we will grant the motion and sustain the appeal.

I. APPLICABLE LAW

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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, claims to have entered the United States without inspection, admission, or parole. The Petitioner entered into a common law marriage with A-R-R-¹, a U.S. citizen, in Colorado, a state that allows the creation of common law marriage, in 1987. The Petitioner and A-R-R- later moved to Nebraska, a state that does not allow common law marriage, but recognizes the validity of a common law marriage contracted in a state which recognizes such marriage. The Petitioner filed the Form I-360 on March 4, 2014, based on her relationship with A-R-R-. The Director found the evidence insufficient to establish that the Petitioner entered into a common law marriage with A-R-R- in Colorado, and denied the Form I-360 as the Petitioner did not have a qualifying relationship with a U.S. citizen. On appeal, we determined that the Petitioner entered into a valid common law marriage in Colorado, and that the marriage was considered valid in Nebraska, when she and A-R-R- moved together to that state. We nevertheless dismissed the appeal, as the Petitioner admitted that her common law marriage terminated more than two years before she filed the VAWA petition.

III. ANALYSIS

On motion, the Petitioner states that although she is separated from her husband, she has not obtained a divorce, and accordingly is still married to her U.S. citizen spouse. The Petitioner has overcome our previous decision. The motion will be granted and the appeal will be sustained for the following reasons.

In our previous decision, incorporated here by reference, we concluded that the Petitioner had a common law marriage with A-R-R- that was contracted without a formal ceremony in Colorado, and that the marriage was valid in Nebraska. Nevertheless, we concluded that, according to the Petitioner, her marriage terminated in 2010. As the marriage ended more than two years before the Petitioner filed the VAWA petition on March 4, 2014, and she did not establish a connection between the termination of the marriage and A-R-R-'s battery or extreme cruelty, she was not eligible for the benefit. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act; 8 C.F.R. § 204.2(c)(1)(ii).

On motion, the Petitioner submits a supplemental statement clarifying that while she and her spouse separated in June 2010, she has not obtained a divorce from him. She asserts that she has referred to her marriage as "broken," that they were "separated," and she never said that her marriage was terminated by divorce. She states she went to court for a custody determination for their youngest child, and did not pursue a divorce. The Petitioner's assertions are corroborated by other statements in the record which refer to the couple's separation. The record does not contain any indication that the Petitioner and A-R-R- have divorced. The Petitioner submits documentation from Colorado indicating that once a party is considered to have a common law marriage, the marriage must be legally terminated through an annulment or a divorce. In Nebraska, where the Petitioner resides, the Supreme Court has acknowledged that in order to legally terminate a common law marriage, one of

¹ Name withheld to protect the privacy of the individual.

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the parties must obtain a divorce. *Else v. Else*, 367 N.W.2d 701 (1985) (Divorce does not exist at common law, and is within the exclusive jurisdiction of the legislative branch).

Accordingly, the Petitioner has established that she has a qualifying relationship with a U.S. citizen, and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

IV. CONCLUSION

The Petitioner has established that our prior decision was based on an incorrect application of law. Consequently, the motion to reconsider must be granted. *See* 8 C.F.R. § 103.5(a)(4).

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, the Petitioner has met that burden.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of Y-G-*, ID# 16854 (AAO June 21, 2016)