U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-O-

DATE: NOV. 27, 2017

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) 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 of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that the Petitioner had not established the requisite qualifying relationship with a U.S. citizen spouse and corresponding eligibility for immediate relative classification based on such relationship, because he had not demonstrated the lawful termination of his previous marriage in Ghana before he married his U.S. citizen spouse.

On appeal, the Petitioner submits a brief and additional evidence, asserting that his first marriage had been lawfully terminated before he married his U.S. citizen spouse.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the petitioner or his or her child was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1). In addition, a petitioner 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 C.F.R. § 204.2(c)(1).

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). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition. However, the definition

of what evidence is credible and the weight given to such evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner is a native and citizen of Ghana who last entered the United States in August 2012 as a nonimmigrant visitor. He married S-W-,[1] a U.S. citizen, in 2013, in New Jersey. The record reflects that the Petitioner had previously been married under customary law in Ghana to A-L- in 2008. The Petitioner filed a VAWA petition in October 2015.

The Director denied the VAWA petition, finding that the Petitioner did not establish the requisite qualifying relationship as required under section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act based on his marriage to S-W-. Specifically, the Director determined that the Petitioner's divorce decree for his first marriage to A-L- in Ghana had been found to be fraudulent and consequently, concluded that he did not demonstrate the legal dissolution of his first marriage and the lawful validity of his subsequent marriage to S-W-. *See* 8 C.F.R. § 204.2(c)(2)(ii) (requiring evidence of termination of all prior marriages to establish the requisite qualifying relationship based on marriage to an abusive U.S. citizen or lawful permanent resident spouse). The Director further found that because the Petitioner did not establish the required qualifying relationship, he necessarily did not demonstrate corresponding eligibility for immediate relative classification based on such a relationship as required under section 204(a)(1)(A)(iii)(II)(cc) of the Act and 8 C.F.R. § 204.2(c)(1)(i)(B).

Upon review, the record does not contain evidence of any investigation that found the Petitioner's divorce decree in the record below to be fraudulent. Nonetheless, the present record does not overcome the grounds for denial, as it does not establish that the Petitioner's first marriage had been legally dissolved before his marriage to his U.S. citizen spouse.

The relevant evidence below includes: the Petitioner's statement; a joint statutory declaration before the High Court of Justice, dated 2012, asserting the dissolution of the Petitioner's first marriage under customary law on 2010, and an original divorce decree by the District Magistrate Court in Ghana issued on 2012, with the Petitioner's accompanying affidavit and ex-parte motion.

On appeal, the Petitioner maintains that the divorce decree from the District Magistrate Court in was legally obtained and he submits a duplicate original of the divorce decree, accompanied by a certification from the Second Deputy Judicial Secretary of the Judicial Service of Ghana, and a second certification from the Ministry of Foreign Affairs and Regional Integration (Ghanaian Foreign Ministry), verifying the signatures of the court officials on the divorce decree and that of the Second Judicial Secretary on the separate attachment.

[1] Initials used to protect the identity of the individual.

Although the record does not disclose any investigatory findings establishing the divorce decree below to be fraudulent, the decree and attached certifications are not sufficient to establish the termination of the Petitioner's marriage to A-L- under *Matter of Dabaase*, 16 I&N Dec. 39, 40 (BIA 1976). The Board of Immigration Appeals (Board) in *Matter of Dabaase* held that a decree confirming a divorce "should be certified as a true copy by the issuing court and, in turn, by the appropriate United States embassy or consulate as a decree of the court." *See also Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (recognizing that while registration of a customary divorce with the court was no longer required under amendments to the marriage laws in Ghana, the evidentiary requirements articulated in *Matter of Dabaase* were still applicable when utilizing a district court divorce decree to establish a legal dissolution of a marriage in Ghana).

Here, although the record includes a certification of the signatures on the divorce decree from the Ghanaian Foreign Ministry, it does not contain a certification of the divorce decree by the U.S. embassy or consulate to establish its validity. Such a certification is required under the evidentiary requirements outlined in *Matter of Dabaase*, as the Petitioner's customary divorce was registered with a Ghanaian court and a court divorce decree was issued. These evidentiary requirements are also necessary in light of several significant inconsistencies in the record below. For instance, the Petitioner asserted in these VAWA proceedings that his marriage to A-L- was dissolved on [redacted] 2012. He also submitted a 2012 divorce decree and his corresponding sworn affidavit to the District Magistrate Court seeking the decree, both of which also stated that the marriage was dissolved on that date. As an initial matter, the Petitioner's sworn affidavit on its face indicates that the Petitioner executed the affidavit in [redacted] Ghana on [redacted] 2012, which was not possible as the Petitioner had already been in the United States on that date. Additionally, although the affidavit indicates that a statutory declaration from both families was attached to confirm the dissolution of the marriage, one was not submitted with the decree.

the record does, however, contain an [redacted] 2012, joint statutory declaration from two "representatives" for the Petitioner and A-L- that was previously submitted in the Petitioner's 2014 adjustment of status proceedings based on his marriage to S-W-.[2] This joint statement contradicts the Petitioner's assertions in these proceedings and states that the couple's marriage was actually

[2] Under *Matter of Kodwo*, a statutory declaration from the fathers or the heads of the households of the parties may be sufficient to establish the dissolution of a marriage under customary law in Ghana if the evidence establishes: (1) the tribe to which the spouse(s) belongs, (3) the current customary divorce law of that tribe, and (3) the fact that the pertinent ceremonial procedures were followed. 19 I&N Dec. at 482 (citing *Matter of DaBaase*, 16 I&N Dec. at 40). The parties to the customary divorce must also prove that the divorce was properly perfected, and as such, the affidavits should be specific and include the full names and birth dates of the parties; the date of the customary marriage; the date of, and grounds for, the dissolution of the marriage; the names, birthdates of, and custody agreement for any children born of the marriage; and a description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, the type of divorce, and any other relevant information. *Id.* at 483. The Petitioner does not assert and the record does not show that the joint declaration here meets the requirements set forth in *Kodwo*. In addition, there is no evidence establishing the authority of the "representatives" who executed the joint declaration to act in that capacity as either the Petitioner and A-L-'s fathers or heads of their households. Further, the joint declaration is not sufficient to establish the dissolution as the couple's marriage in light of the significant discrepancies between the declaration and other evidence in the record, including the Petitioner's own statements, discussed in this decision.

dissolved two years earlier on [redacted] 2010. The Petitioner made the same inconsistent assertion as to the date of his divorce from A-L- on his Form G-325A, Biographic Form, submitted in the his 2014 adjustment of status proceedings. Further contradicting his initial assertion before USCIS that he was divorced in 2010, the Petitioner asserted on his nonimmigrant visa application, executed in July 2012, that he was still married, listed his spouse as A-L-, and indicated that she resided at his home address. The record offers no explanations for these inconsistencies in the Petitioner's statements before USCIS and in his documentary evidence. Finally, although the Petitioner submitted a duplicate original of the District Magistrate Court decree executed by the same officials on the same date, the version submitted on appeal is facially different as it contains additional language than the previously submitted document.

In summary, as the record does not contain a certification of the District Magistrate Court divorce decree from the U.S. Embassy or consulate and the record reflects significant discrepancies regarding the dissolution of the Petitioner's prior marriage to A-L-, he has not demonstrated the lawful termination of that marriage. He therefore has not established the validity of his subsequent marriage to his U.S. citizen spouse for purposes of establishing a qualifying spousal relationship.

III. CONCLUSION

On appeal, the Petitioner has not overcome the grounds for denial, as he not demonstrated the requisite qualifying spousal relationship to a U.S. citizen and corresponding eligibility for immediate relative classification based on the qualifying relationship. Accordingly, the record does not establish the Petitioner's eligibility for immigrant classification as the abused spouse of a U.S. citizen.

ORDER: The appeal is dismissed.

Cite as *Matter of L-O-*, ID# 126497 (AAO Nov. 27, 2017)