



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

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

In Re: 8197672

Date: MAY 21, 2021

Appeal of Vermont Service Center Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on her “U-1” nonimmigrant status, seeks immigrant classification of the Derivative, her spouse, as a qualifying family member under section 245(m)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(3). The Director of the Vermont Service Center denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition), concluding that the record did not establish, as required, that the Derivative was a qualifying family member of the Petitioner. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. Upon *de novo* review, we will remand the matter to the Director for the issuance of a new decision.

I. LAW

A U-1 nonimmigrant who has applied for, or gained, her lawful permanent residency may seek lawful permanent residency on behalf of a qualifying family member who has never held U nonimmigrant status, if granting the status would avoid extreme hardship. Section 245(m)(3) of the Act.

The term “qualifying family member” is defined as “a U-1 principal applicant’s spouse, child, or, in the case of [a U-1 principal who is a] child, a parent who has never been admitted to the United States as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act.” 8 C.F.R. § 245.24(a)(2). The qualifying family relationship must exist at the time of the U-1 principal’s adjustment of status to lawful permanent residency and continue to exist through the adjudication of the qualifying family member’s U immigrant petition. 8 C.F.R. § 245.24(g)(2).

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner and the Derivative were married in 2012. The Petitioner was granted U nonimmigrant status and subsequently became a lawful permanent resident in January 2017. She

filed the instant U immigrant petition on behalf of the Derivative in August 2017. The Director denied the U immigrant petition in May 2019, concluding that the Derivative had a previous marriage for which proof of termination had not been submitted.

On appeal, and throughout the record, the Petitioner asserts that the Derivative had never been married prior to their marriage in [redacted] 2012. The Petitioner has explained the steps that they have taken to show that the Derivative was never married in Guatemala prior to marrying the Petitioner in [redacted] 2012. As stated in record before the Director and on appeal, the Petitioner and Derivative were initially unaware of the alleged marriage between the Derivative and M-R-¹ in Guatemala in 1988. They were made aware of this information based on the filing of a previous derivative U nonimmigrant petition, which was ultimately denied based on the Derivative's alleged previous marriage and a lack of evidence of its legal termination. After the adjudication of the U nonimmigrant petition, the Petitioner acquired additional information as a result of a Freedom of Information Act (FOIA) request from USCIS.

At the time of filing the U immigrant petition, the Petitioner explained in a statement that the Derivative was the victim of "notario fraud" in the 1990s. The Derivative had been advised that a notario would be able to acquire him a work permit to lawfully work in the United States; however, it was not disclosed how the notario would accomplish this. The Derivative's administrative record indicates that the notario filed an asylum application for the Derivative and submitted what the Petitioner purports to be a fraudulent marriage certificate between the Derivative and M-R-, married [redacted] 1988² in Guatemala.³ According to the Petitioner, several forms submitted on behalf of the Derivative at that time display his name misspelled and include a fraudulent signature. The Petitioner submitted documents with the Derivative's actual signature around the same time period, which is visibly different and spelled correctly. Further, as attested to by the Petitioner, the English translation of the marriage certificate between the Derivative and M-R- submitted at that time also includes several errors, including the misspelling of the Derivative's name and the purported date of marriage.⁴ Furthermore, the Petitioner submitted a letter from J-R-V-, a roommate and coworker of the Derivative at the time of his alleged marriage, attesting to the Derivative's whereabouts at the time he was allegedly married to M-R- in Guatemala. In the letter, J-R-V- asserts that the Derivative was residing with him in [redacted] from 1985 to 1990, during which time they worked together Monday through Saturday at a recycling center, and that the Derivative "had impeccable punctuality and attendance." The Petitioner then explained, in a statement, that the date of the purported marriage [redacted] 1988, was a Saturday, which would have been a work day for the Derivative, and it would be unreasonable to expect that he could travel approximately 798 miles from [redacted] to Guatemala where the marriage allegedly took place and still be at work that day. Finally, a memorandum documenting a U.S. Immigration and Customs Enforcement (ICE) investigation submitted by the Petitioner indicates that the Derivative's file was "identified as one of many associated with a large Asylum Fraud scheme [involving] aliens (Riders) who fraudulently claim to be dependants of aliens with approved or pending I-589s (Principals)." The memorandum further states that "[t]he Principals are primarily from

¹ Initials are used to protect the identities of the individuals.

² The original English translation of this marriage certificate, submitted with the asylum application, indicates a marriage date of [redacted] 1988.

³ According to the Derivative, he has no knowledge of who this person, M-R-, is.

⁴ The Petitioner has submitted a corrected English translation of this document with the U immigrant petition.

El Salvador and Guatemala,” that “[u]sually the supporting documentation includes fraudulent birth certificates from these countries, although it appears that a significant percentage of them are really Mexican” and that “in some cases, the Principal is invented.”

In order to obtain proper documentation from Guatemala, the Petitioner also hired a local attorney, and a letter attesting to his efforts was submitted at the time of filing of the U immigrant petition. First, the attorney reviewed the marriage certificate between the Derivative and M-R- and concluded that it is possibly fraudulent. The attorney noted that the first inconsistent element of the document is that the only portion of the registration information found on the document is the “record number” because this should also include the numbers of the book and page on which the information was registered. The attorney further noted that the second inconsistent element is that the name of the department is misspelled as [REDACTED] when the correct name is [REDACTED]. The attorney also highlighted that the third inconsistent element is that the only seal that appears on the document is that of the Treasurer’s Office, when the seal that should appear is that of the Civil Registrar. Finally, the attorney stated that the fourth inconsistent element is that the position of “Chief of the Civil Registry,” the title of the signatory on the document, does not exist and that the function is not delegable, as the only person who can register a marriage in Guatemala is the Civil Registrar.

The record before the Director likewise included three individual certificates from the National Registry of People in Guatemala, obtained by the same local attorney. Each certificate attested to the “Absence of Marriage” and “Marriage Not Found” between the Derivative and M-R- in Guatemala on either [REDACTED] 1988 or [REDACTED] 1988. The first certificate specifically states that a marriage between the Derivative and M-R-, citizen of Guatemala, in the municipality of [REDACTED] Guatemala on [REDACTED] 1988, was not found; the second certificate specifically states that a marriage between the Derivative and M-R-, citizen of El Salvador, in the municipality of [REDACTED] Guatemala on [REDACTED] 1988, was not found; and the third certificate specifically states that a marriage between the Derivative and M-R-, citizen of El Salvador, in the municipality of [REDACTED] Guatemala on [REDACTED] 1988, was not found. As asserted by the Petitioner on appeal, the Director’s request for evidence (RFE) and later denial of the petition did not reflect consideration of all of this evidence and, instead, requested or hinged on the lack of submission of a divorce decree.

On appeal, the Petitioner reiterates that the Derivative was never married to M-R- and alleges that the Director erred in requiring the submission of a divorce decree for a marriage that never occurred. She additionally submits newly found information about M-R-. Specifically, she submits a possible current address, phone numbers, and listed relatives of M-R-, obtained through the services of a private investigator, and evidence of her unsuccessful attempts to contact M-R- to demonstrate that she and the Derivative have never been married. The evidence provides that the Petitioner’s Counsel mailed a letter to M-R-’s probable current address in June 2018, but did not receive a response.⁵ The Petitioner additionally submits email correspondence from the National Registry of People in Guatemala confirming that “[t]he only way that RENAP [Registro Nacional de las Personas] can confirm that an event, in this case a Marriage, was not carried out, is through the Absence of Marriage [records] that the agency issues, which [the Petitioner] already posses[es].” The message further states

⁵ The Petitioner also claims, in her statement on appeal, that Counsel reached out to someone who appears to be the same M-R- on Facebook and called the two probable telephone numbers provided by the private investigator and left messages, but did not receive a response.

that RENAP “does not issue any other document or letter” in order to invalidate a copy of a marriage certificate, as requested by the Petitioner’s Counsel.

Upon *de novo* review, based on the evidence in the record before the Director and on appeal, the Petitioner has demonstrated, by a preponderance of the evidence, that the Derivative was not married prior to his marriage to the Petitioner in [] 2012, thus evidence of termination for the Derivative’s previous marriage is not necessary. *See* 8 C.F.R. § 103.2 (permitting the submission of secondary evidence “pertinent to the facts at issue” if required evidence either does not exist or cannot be obtained). The email correspondence from the National Registry of People in Guatemala provides that the only way to establish that a marriage did not occur in Guatemala is through the submission of an Absence of Marriage certificate, of which the Petitioner submitted three upon filing of the U immigrant petition. Moreover, substantial additional evidence in the record supports the Petitioner’s version of events as outlined in her statements, acknowledging the submission of a marriage certificate in support of an asylum application filed on behalf of the Derivative in 1990, but questioning both the asylum application’s and marriage certificate’s authenticity and validity. Because the sole ground for denial of the Petitioner’s U immigrant petition has been overcome on appeal, we remand the matter to the Director to consider whether the Petitioner has satisfied the remaining eligibility requirements for the Derivative’s U immigrant petition.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of new decision consistent with the foregoing analysis which, if adverse to the Petitioner, shall be certified to us for review.