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U.S. Department of Homeland Security

U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: DEC 27 2013 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

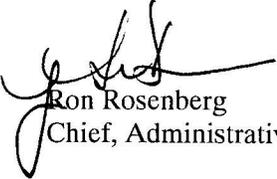
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director, (“the director”), initially approved the immigrant visa petition, but later revoked the approval after notice to the petitioner. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director revoked approval of the petition on the basis of his determination that the petitioner failed to demonstrate that he had a qualifying relationship with a United States citizen and was eligible for immediate relative classification because of that relationship.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(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 . . . proof of the immigration status of the lawful permanent resident abuser. 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

Pertinent Facts and Procedural History

The petitioner, a citizen of Sierra Leone, entered the United States on September 28, 2001 as a B-1 visitor.¹ The petitioner married H-R-², a citizen of the United States, on January 5, 2004 in Maryland and they were later divorced on September 10, 2009. H-R- filed a Form I-130 Petition for Alien Relative on the petitioner's behalf in March of 2004 which she later withdrew on July 20, 2007. The petitioner filed the instant Form I-360 on February 17, 2009 and it was approved on December 3, 2009. The director issued a Notice of Intent to Revoke (NOIR) approval of the petition on March 14, 2012. The NOIR stated that at the petitioner's interview for adjustment of status, it came to the attention of U.S. Citizenship and Immigration Services (USCIS) that the petitioner had not legally terminated his marriage to his prior spouse. The director stated that as a result, the petitioner failed to demonstrate the existence of a qualifying relationship to a U.S. citizen and his corresponding eligibility for immediate relative classification on the basis of such a relationship at the time of the approval of the Form I-360. The petitioner, through counsel, submitted a timely response which the director found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on December 24, 2012.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has overcome the director's grounds for revocation. The appeal will be sustained and approval of the petition will be reinstated for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship including termination of all prior marriages. Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983); *Matter of Weaver*, 16 I&N Dec. 730, 733 (BIA 1979). When the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)).

The petitioner initially submitted a marriage certificate showing that he married H-R- on January 5, 2004 which shows his marital status at the time the marriage license was issued as "divorced." In

¹ The petitioner applied for asylum with the Arlington Asylum office, was subsequently referred to the Baltimore Immigration Court and placed in removal proceedings. After receiving an order of removal on May 16, 2002, the petitioner's case was reopened and is currently in removal proceedings before the Immigration Court in Baltimore, Maryland.

² Name withheld to protect individual's identity.

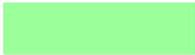
the NOIR, the director determined that the petitioner resided in the United States at the time of his divorce from his first wife in Sierra Leone and that this divorce by proxy was not recognized in the United States as valid. The NOIR stated that “[a]ccording to Sierra Leone law, proxy marriage and divorces are NOT valid...and local imams have been strongly advised not to perform/document such. Unfortunately the GOSL [Government of Sierra Leone] has thus far been unable to enforce this position. Thus by default, such proxy divorces are generally considered ‘valid’ by GOSL officials.” The director did not cite to any applicable law of Sierra Leone regarding proxy divorces and based his determination solely on correspondence between the Baltimore District Office and the United States Embassy in Freetown, Sierra Leone. In response to the NOIR, the petitioner submitted a copy of his divorce decree showing that he was divorced from his prior wife on December 3, 2003 in accordance with Mohammedan law and a letter from [REDACTED] the Deputy Administrator & Registrar General of Sierra Leone. In his letter, Mr. [REDACTED] stated that any final divorce contracted under Mohammedan Law or Religion must “be in accordance with the tenets of the Mohammedan religion or law” and that a divorce by proxy is valid if it is in conformity with such law. In his decision revoking approval of the Form I-360, the director dismissed the letter from Mr. [REDACTED] because it did not specifically address the petitioner’s divorce and determined that the petitioner failed to submit evidence establishing his proxy divorce from his prior wife was valid for immigration purposes.

On appeal, counsel asserts that the director failed to give appropriate weight to Mr. [REDACTED] letter which refuted the conclusion that proxy divorces in Sierra Leone were not valid. Counsel also submits a second letter from the Sierra Leone Office of the Administrator and Registrar General stating that the petitioner’s December 3, 2003 divorce was registered and a second copy of the petitioner’s divorce decree with a notarized statement that the divorce was registered. Counsel asserts that registration of the petitioner’s divorce with the government of Sierra Leone is further evidence of its legitimacy.

According to the U.S. Department of State:

A certificate of Moslem divorce may be obtained from the mosque that sanctioned the divorce, and a certificate of native divorce may be obtained from the local authority that sanctioned the divorce. If a Moslem or native divorce was also registered with the civil authorities, a certified copy may be obtained from the Office of the Registrar General, Walpole Street, Freetown.

Sierra Leone Reciprocity Schedule, U.S. DEPT. OF STATE, http://travel.state.gov/visa/fees/fees_5455.html?cid=9731 (last visited December 20, 2013). The petitioner submitted a divorce decree effected at a mosque in Freetown, Sierra Leone in accordance with Mohammedan law. On appeal, the petitioner submits a letter from the Office of the Registrar General in Freetown, Sierra Leone, confirming that the petitioner’s divorce from his first wife was registered with that office. The director determined that because the petitioner lived in the United States at the time of the divorce, it was therefore not valid. As the director did not cite to any applicable law of Sierra Leone governing religious divorces, he did not have good and sufficient cause to revoke approval of the Form I-360. Accordingly the petitioner has established that his



prior divorce was valid and he therefore had a qualifying relationship as the spouse of his second wife, 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)(CC)(ccc) and (cc) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained and approval of the petition shall be reinstated.

ORDER: The appeal is sustained.