U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-T-

DATE: APR. 19, 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 Petitioner entered the United States with an H-1B nonimmigrant visa, wed C-C-,[1] a U.S. citizen, and later filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director of the Vermont Service Center initially granted and then revoked approval of the VAWA petition, concluding that the Petitioner had been previously married and that he did not establish that his prior marriage had been legally terminated before his marriage to C-C-. Consequently, he had not established that he was eligible for immediate relative classification based on his relationship with his former spouse, as required by section 201(b)(2)(A)(i) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has established, through documentary evidence, that he is eligible for the benefit sought.

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

I. LAW

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

[1] Name withheld to protect the individual's identity.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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 a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act. In addition, the 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.

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which provides, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

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

> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . 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 . . . .

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 (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 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The relevant evidence submitted below does not demonstrate that the Petitioner had a qualifying relationship with his U.S. citizen spouse and that he was eligible for immediate relative classification. A review of the record does not establish that the Petitioner's prior marriage was legally terminated before he married C-C-.

The evidence shows that the Petitioner was previously married to A-T- in India before he married his U.S. citizen spouse, C-C-. The Petitioner claimed that he divorced A-T- and as evidence, submitted a mutual divorce agreement. The divorce agreement showed that the Petitioner and his spouse mutually agreed that their marriage should be terminated.

In her notice of intent to revoke (NOIR), the Director determined that the mutual divorce document was not issued by a judicial authority or court, nor was it signed by a recognized authority. The Director determined it was therefore not conclusive evidence of the termination of the Petitioner's prior marriage. The Director stated that, pursuant to guidelines from the U.S. Department of State Foreign Affairs Manual (FAM),[2] a divorce by mutual consent is not proof of final dissolution of a Hindu marriage, and that only a final divorce decree, obtained through a court, is proof of the legal termination of a Hindu marriage. The Director requested that the Petitioner submit a final divorce decree to establish the legal termination of his first marriage to A-T-, and that he was free to marry C-C-.

In response to the NOIR, the Petitioner submitted a personal statement, affidavits from four Indian Brahmins or Hindu priests, copies of articles relating to Hindu marriages and divorce, a copy of the mutual divorce agreement, a copy of the USCIS Policy Memorandum PM-602-0022, *Revocation of VAWA-Based Self-Petitions (Forms I-360)*, of Dec. 15, 2010, and a request for the Indian Court to issue a *nunc pro tunc* order, which would grant him his final divorce retroactively. In his personal statement, the Petitioner reiterated that he divorced A-T- in India by mutual consent and that it is customary in his community to do so. The Petitioner stated that, as in his case, where a divorce is properly performed pursuant to custom, a court decree is not necessary to establish that the divorce occurred.

In their affidavits, the Hindu Brahmins, G-B-P-, S-K-S-, R-U-, and J-K-J- explained that couples in their communities do not go to court to get divorced. They further added that a formal divorce

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[2] The FAM in pertinent part states:

> Certified copies of divorce decrees of Christian, Hindu, Parsi, and Sikh divorces can be obtained from the courts of jurisdiction. A certificate from the Kazi or the head of the Jamaat must document divorce between Muslims.
>
> Note that some Hindu communities practice divorce by mutual consent outside of the judicial system, resulting in a "divorce deed." However, only a final "divorce decree, "obtained through a court, is poof of final dissolution of a Hindu marriage.

decree from a court of law is not required for the dissolution of their customary marriages. They explained that a couple may sign an agreement to get divorced in the presence of two to four witnesses, that these types of customary divorces are prevalent in the society of Hindu Brahmins, and that this custom has been followed throughout the ages. Nonetheless, the Director determined that the affidavits from the Brahmin priests did not constitute probative evidence that the Petitioner's divorce was legally terminated in India and accordingly, the Petitioner had not established that he had a qualifying relationship as the spouse of a U.S. citizen or his corresponding eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

In his brief on appeal, the Petitioner asserts that the finding of the Director that only final divorce decrees obtained through the court is proof of dissolution of Hindu marriages is erroneous. The Petitioner cites to the "savings clause" of the Hindu Marriage Act[3] of 1955 (Marriage Act), and Indian case law to support his assertion that the Marriage Act permits married couples to divorce in accordance with the local customs and without judicial intervention.

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). 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). In this case, the record does not contain sufficient evidence to establish that the mutual divorce agreement that the Petitioner provided is equivalent to a legal divorce decree in India, terminating the Petitioner's prior marriage to his former spouse. Specifically, the Petitioner has not provided sufficient evidence to establish that his mutual divorce agreement under Indian customary law was validly obtained. The Petitioner has not sufficiently outlined the requirements of a customary divorce, nor has he provided evidence that he has met those requirements. In addition, the Petitioner has not provided an explanation for his inability to obtain a final divorce decree in India, as required by the FAM. The evidence contained in the record does not establish that the Petitioner properly terminated his prior marriage in India before his marriage to C-C-. Accordingly, the Petitioner has not establish that he had a qualifying marriage as C-C-'s spouse and that he was eligible for immigrant classification based upon that relationship.

The Petitioner also asserts that the Department of Homeland Security can exercise the power to revoke approval of a petition only if there is new evidence not available at the time of the approval. The Petitioner cites to USCIS Policy Memorandum PM-602-0022, *Revocation of VAWA-Based Self-Petitions (Forms I-360)*, Dec. 15, 2010, which states that the Director cannot revoke a petition unless it is based on "new evidence not available at the time the Form I-360 was approved by the [Vermont

[3] *See* Marriage Act § 29(2) ("Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act.").

Service Center]." The Petitioner's assertion in this regard is without merit. The memorandum provides that a revocation of any petition approved under Section 204 of the Act, which includes the Petitioner's VAWA petition, may occur at any time for good and sufficient cause. Consistent with the regulation at 8 C.F.R. § 205.2(a), the Director provided notice to the Petitioner in the NOIR regarding the basis for a possible revocation and, in the revocation, explained why the VAWA petition was revoked.

The Petitioner further asserts that, in his case, proof of a divorce is not required because his marriage violated the Marriage Act. The Petitioner states that since his former spouse, A-T- was a minor at the time that they married; their marriage was void at its inception. However, the Petitioner did not submit any evidence to support this assertion, nor did he provide evidence that he sought to annul the marriage for non-age.

The Petitioner also asserts that the Director should have deferred the adjudication of his petition pending the outcome of his request from the Indian courts for a *nunc pro tunc* determination that his marriage was dissolved retroactively on 1999. The Petitioner initially claimed that it would take four to six months to obtain the court's decision. To date, however, the Petitioner has not submitted the results of the court's decision.

As discussed above, the Petitioner has not demonstrated that he had a qualifying relationship with his U.S. citizen spouse. He consequently has not established 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.

ORDER: The appeal is dismissed.

Cite as *Matter of G-T-*, ID# 181147 (AAO Apr. 19, 2017)