U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34097803

Date: NOV. 22, 2024

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

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 petition, concluding that the Petitioner did not establish that his prior marriage in Nigeria was terminated before his marriage to his U.S. citizen spouse. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

In prior filings, the Petitioner submitted a [redacted] 2016 Decree Nisi and a [redacted] 2016 Decree Absolute from the High Court of Justice, Oyo State, [redacted] Judicial Division [redacted], Nigeria (High Court) to support his claim that he was divorced from his prior spouse, H-I-,[1] in [redacted] 2016. He later submitted a letter from the Office of the Chief Registrar stating that the Decree Nisi contained an error in the judge's name, along with a corrected Decree Nisi and new Decree Absolute. After the Director notified him of a discrepancy in the effective date on the new Decree Absolute, he submitted on appeal another letter from the Office of the Chief Registrar and a Decree Absolute with a corrected date. He also asserted on appeal that he and H-I- had an Islamic marriage which was dissolved on [redacted] 5,[2] 2016 when he declared three times to H-I-, "I divorce thee." He contended that the High Court lacked subject matter jurisdiction to dissolve the Islamic marriage, but that the orders from the High Court were still valid and that he obtained them due to poor legal advice that he would need documentary evidence of his divorce. In our decision on appeal, we noted that the

[1] We use initials to protect confidential information.

[2] The Petitioner correctly points out a typographical error in our appeal decision, in which we mistakenly listed the claimed date of Islamic divorce as [redacted] 8 instead of [redacted] 5. This did not materially impact the accuracy of our analysis, as either date was after the date of the Decree Nisi.

Petitioner had not claimed to have an Islamic marriage until after his VAWA petition was denied due to discrepancies in the Decree Nisi and Decree Absolute. Additionally, we pointed out that the Petitioner's explanations did not resolve the matter, as he claimed he obtained the Decree Nisi, dated [ ] 2016, to resolve the absence of documentation of his Islamic divorce that occurred later in [ ] 2016.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a new personal statement; a copy of his [ ] 2012 Islamic marriage certificate; photographs of the marriage ceremony, some of which he previously submitted; and supporting affidavits from friends, family members, H-I-, the mediator who facilitated his Islamic divorce, and a professor of Islamic studies. The affiants state that the Petitioner had an Islamic marriage and later commenced the divorce process in [ ] 2016 when he made the required "divorce pronouncement" to H-I-, thereby commencing a required "waiting period of three menstrual cycles," or "*iddah*." The writers indicate that once the waiting period was complete, the divorce became final when the Petitioner "pronounced the divorce three times" at a dissolution meeting in [ ] 2016. A professor of Islamic and Religious Studies at [ ] indicates that "an Islamic divorce can be validly concluded without any formal registration or court documentation" if the proper process is followed. The professor states that in the case of the Petitioner and H-I-, he made a pronouncement to initiate divorce, "his ex-wife acknowledged it and observed iddah, thereby finalizing their divorce under Islamic law before the Petitioner's subsequent marriage." Based on this evidence, the Petitioner claims that by the time the Decree Nisi was issued in [ ] 2016, he had already begun the Islamic divorce process the month prior. The Petitioner therefore asserts that he has submitted sufficient evidence that his marriage to H-I- was terminated under Islamic law.

On motion, the Petitioner also contests the correctness of our prior decision. He cites the statutory requirements for VAWA, emphasizes that his burden is to show eligibility by a preponderance of the evidence, and notes that VAWA petitioners can submit "any credible evidence" to meet their burden. He alleges that we improperly focused on inconsistencies in the evidence from the High Court while disregarding credible evidence showing that he has a qualifying relationship with a U.S. citizen spouse. He reiterates that he only sought the High Court decrees due to incorrect legal advice that he would need documentation of his Islamic divorce, and that he did not raise the issue of the Islamic divorce until his appeal because he did not realize that he had "submitted the wrong divorce documents" until he met with current counsel. He argues that because he has submitted evidence of his Islamic marriage and divorce, a focus on the High Court decrees is misplaced.

We acknowledge the Petitioner's evidence and arguments on motion, but he still has not met his burden of establishing by a preponderance of the evidence that his marriage to H-I- was terminated prior to his marriage to his U.S. citizen spouse. Although the Petitioner claims for the first time on motion that he began the Islamic divorce process in [ ] 2016, he previously claimed on appeal that

the divorce occurred in 2016. In his personal statement on appeal, the Petitioner claimed that "[t]he dissolution of [his] marriage took place on 5, 2016, through the process of 'Talaq,' which is an Islamic divorce," in the presence of a mediator, the Petitioner's father, and his spouse's older brother. He stated, "I initiated the divorce and pronounced divorce from [H-I-] three (3) times on 5, 2016." He also noted that *"[s]ubsequently*, [his] previous legal counsel advised [him] to obtain a civil document as evidence to substantiate the Islamic divorce, as the customary divorce did not possess any official document or proclamation confirming its dissolution." (Emphasis added). The Petitioner's new claims on motion that he initiated the dissolution three months earlier by telling H-I- in 2016 that he would like to divorce her, that the dissolution later became final in 2016, and that he sought a High Court order while the required Islamic waiting period was ongoing, are inconsistent with his prior assertions that the divorce occurred on 5, 2016, and that he subsequently sought civil documents from the High Court because the Islamic divorce did not generate documentary evidence. The Petitioner submitted multiple supporting affidavits on appeal from people confirming his claim that the Islamic divorce occurred in 2016, and none mentioned that the process began in 2016. The Petitioner has presented this adjusted timeline for the first time on motion only after learning that his prior claims were insufficient to resolve the discrepancies in his case. He does not explain why his assertions about the timeline have changed. Due to continuing concerns with the consistency and validity of the evidence, the record still lacks sufficient evidence to meet the Petitioner's burden.

Furthermore, although the Petitioner states he sought documentation of his divorce from the High Court because of incorrect legal advice, he does not explain how he received the Decree Nisi and Decree Absolute from a court that lacked jurisdiction over his case. He claimed on appeal that his Islamic divorce could not have been dissolved in the High Court due the lack of jurisdiction, but still asserted that the documents purportedly issued by that court are valid. The record remains unclear as to how and why the High Court, while lacking jurisdiction, not only issued the original Decree Nisi and Decree Absolute but then reissued them due typographical errors along with two letters from the Office of the Chief Registrar confirming the validity of the decrees. It is unclear why the High Court would correct errors in the decrees without correcting the significant underlying error of having improperly issued them without jurisdiction to do so. The existence of the documents from the High Court, including the decrees and the letters from the Office of the Chief Registrar, creates a discrepancy that has not been resolved. As we explained on appeal, due to the inconsistent and shifting nature of the Petitioner's explanations about the termination of his marriage, the evidence is not sufficient to show he was legally divorced in Nigeria prior to his marriage in the United States. He submitted documents with material discrepancies in dates and other essential details, did not claim he had an Islamic marriage which could only be dissolved through an Islamic divorce until after the High Court records were found to be insufficient, submits another alternate timeline for the first time on motion, and has not explained how a court lacking jurisdiction over his case could have issued the decrees he initially submitted.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.