

June 8, 2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479



U.S. Citizenship
and Immigration
Services

[REDACTED]
c/o SUSAN THORN
LAW OFFICE OF SUSAN THORN
43 WEST 43RD STREET STE 93
NEW YORK, NY 10036

RE: [REDACTED]
I-360, Petition for Amerasian, Widow(er), or Special
Immigrant

REQUEST FOR EVIDENCE

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE RECEIPT NUMBER. THIS PAGE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence requested on the attached page(s). Include duplicate copies if you are requesting consular notification.

Your response must be received in this office by September 3, 2020.

Please note that you have been allotted the maximum period allowed for responding to a Request for Evidence (RFE). The time period for responding cannot be extended. See Title 8 Code of Federal Regulations (8 CFR), Section 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. See 8 CFR 103.2(b)(11). If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

PLEASE RETURN THE REQUESTED INFORMATION AND ALL SUPPORTING DOCUMENTS WITH THIS ORIGINAL REQUEST ON TOP TO:

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
75 LOWER WELDEN ST
ST ALBANS VT 05479

Your written inquiry must be signed and should include your A-number, receipt number, and indicate the purpose of your inquiry.

U.S. Citizenship and Immigration Services (USCIS) has reviewed your petition/application and supporting evidence. You did not submit sufficient evidence to establish you were free to marry Michael Evans. Therefore, additional evidence is needed.

Discrepancies

A full review of administrative records showed you filed a Nonimmigrant Visa Application with the Department of State on or about [REDACTED]. You signed and attested to being involved in a common law marriage. You listed your spouse as [REDACTED] (Date of Birth [REDACTED]), as of the date of application of the Visa. On page 13, part 10 of this instant petition you have claimed (1) marriage. Please explain the discrepancies.

PROOF OF LEGAL TERMINATION OF MARRIAGE

You did not submit proof of the termination of your marriage to [REDACTED]. As such, it is unclear if you were free to marry [REDACTED] as it appears you may have been married to [REDACTED] at the time of your marriage to [REDACTED]. Submit proof of the legal termination of the marriage of [REDACTED].

Such proof would normally be a final (absolute) divorce decree, death certificate, annulment, etc. In order for the legal termination of a marriage to be considered valid for immigration purposes, it generally must be valid in the jurisdiction where it was terminated. In addition, the divorce must also be recognized in the jurisdiction where any subsequent marriage occurred. Matter of P, 4 I&N Dec. 610, (BIA 1952).

Note: A Divorce Nisi is not considered to be evidence of a final divorce.

Document Submission Guidelines

If you are unable to submit the documentation requested by USCIS, please submit a statement explaining why this documentation is unavailable to you.

You may submit either the original documents or legible photocopies of the originals, including copies of the front and back of each document. If you choose to submit original documents, they will not be returned to you.

Affidavits may be submitted for consideration. Affidavits are written statements sworn to by persons who have personal knowledge of the fact(s) to which they attest. Properly executed affidavits should contain the following information about the affiant:

- affiants full name, address, phone number, date and place of birth;
- relationship to you, if any;
- complete details concerning how and when the affiant acquired knowledge of the event to which they attest;
- detailed information concerning the event; and
- a complete, legible copy of the affiant's identity document such as driver's license, state issued ID card, or passport.

Do not submit documents that were previously submitted.

The processing of your form or benefit request will resume upon timely receipt of your response. Written inquiries may be mailed to:

USCIS/ Vermont Service Center
ATTN: VAWA T U Division
75 Lower Welden Street
St. Albans, VT 05479-0001

Domestic Violence Information and Resources

For further information and resources regarding domestic violence, you may wish to contact the following:

National Domestic Violence Hotline: 1-800-799-7233 **OR** 1-800-787-3244 (TDD for the deaf)

The National Domestic Violence Hotline provides information, crisis intervention and referrals to local service providers, including legal advocacy, to victims of domestic violence or anyone calling on their behalf. The Hotline service is available 24 hours a day, 7 days a week, and is a free phone call from anywhere in the United States, Puerto Rico, or the U.S. Virgin Islands. The staff and volunteers speak both English and Spanish and have access to translators in 139 languages.

National Domestic Violence Hotline Website: www.ndvh.org **OR** www.usdoj.gov/ovw/

LAW OFFICE OF
SUSAN THORN

43 West 43rd Street, Ste. 93, New York, NY 10036 | Tel: 917 667 4842 | Fax: 888 830 0136
Thornimmigration@gmail.com | www.Thornimmigration.com

August 18, 2020

Via FEDERAL EXPRESS

USCIS - Vermont Service Center
ATTN: VAWA T U Division
75 Lower Welden Street
St. Albans, VT 05479-0001

RE: RESPONSE TO REQUEST FOR FURTHER EVIDENCE (RFE), DATED JUNE 8, 2020

I-360, VAWA Self-Petition by Abused Spouse of U.S. Citizen



Dear Sir or Madam:

I represent the above-named Petitioner, Ms. [REDACTED] on her petition to be classified as an Abused Spouse of a U.S. citizen under the Violence Against Women Act (VAWA). My signed Form G-28 was previously submitted with Ms. [REDACTED]'s initial I-360 filing.

In response to Vermont Service Center's RFE, dated June 8, 2020, I enclose the following:

- EXHIBIT 1. **Copy of Certificate of No-Impediment to Marriage**, issued July 9, 2020, issued by the Registrar General's Department of Jamaica, evidencing no marriage records found in Jamaica pertaining to Ms. [REDACTED] from 1997 to the June 2020.
- EXHIBIT 2. **Original Legal Opinion Letter of Mr. Winston A. Douglas**, Attorney at Law, licensed to practice in Jamaica, dated August 4, 2020, w/attached credentials letter stating that: *"Common law unions in Jamaica are not considered marriages and any individual who becomes separated from his or her partner in a common law relationship can move on to other relationships or marriage without any formality"*. Mr. Winston explains that under Jamaica's Property (Rights of Spouses) Act (Act No. 4/2004), pt. 1, Sect. 2, a man and woman *must cohabit for at least 5 years* to be regarded as "husband and wife" and only for the purpose of dividing property after the relationship ends; outside the matter of property rights, the couple does not enjoy similar rights or obligations that attach to individuals in a legal or formal marriage.
- EXHIBIT 3. **Jamaica's Property (Rights of Spouses) Act (Act No. 4/2004), pt. 1**
- EXHIBIT 4. **Marriages, Divorce Certificates – Comments, U.S. Department of State Reciprocity Schedule for Jamaica**, at <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Jamaica.html>, last visited on 08/17/2020.

- EXHIBIT 5. **Original Notarized & Signed Affidavit of [REDACTED]** (Petitioner), attesting to not understanding the legal significance of the phrase “common-law marriage” and that any statement on her tourist visa application indicating she was in such a relationship was an error committed by staff at an internet cafe, who helped her complete the application; further, attesting to only having dated Mr. [REDACTED] for approximately 1 year without cohabitation and never having been married to him.
- EXHIBIT 6. **Original Notarized & Signed Affidavit of Mr. [REDACTED]** (Petitioner’s former boyfriend), with attached copy of Jamaican Driver’s Licence, attesting to only having dated Ms. [REDACTED] for approximately 1 year without cohabitation and never having been married to her.
- EXHIBIT 7. **Original Notarized & Signed Affidavit of Ms. [REDACTED]** (Petitioner’s lifelong friend), with attached copy of Jamaican Passport, attesting to Ms. [REDACTED] and Mr. [REDACTED] having dated for approximately 1 year without cohabitation or marriage.
- EXHIBIT 8. **Original Notarized & Signed Affidavit of Ms. [REDACTED]** (Petitioner’s daughter), with attached copy of Jamaican Elector Registration ID Card, attesting to her mother and Mr. [REDACTED] having dated for approximately 1 year without cohabitation or marriage while she was living with her mother.
- EXHIBIT 9. **Original Notarized & Signed Affidavit of Mr. [REDACTED]** (son of Mr. [REDACTED] & acquaintance of Petitioner), with attached copy of Jamaican Driver’s Licence, attesting to his father and Ms. [REDACTED] having dated for approximately 1 year without cohabitation or marriage while he was living with his father.

The RFE states of Ms. [REDACTED]:

You did not submit sufficient evidence to establish you were free to marry [REDACTED] ...as it appears you may have been married to [REDACTED] at the time of your marriage to [REDACTED]. Submit proof of the legal termination of the marriage of [REDACTED].

See RFE, pg. 2. Specifically, the RFE alleges that Ms. [REDACTED] indicated she was in a common-law marriage with Mr. [REDACTED] on a U.S. tourist visa application in 2014. Based on this allegation, the VSC now requests proof of Ms. [REDACTED]’s termination of a common-law marriage to Mr. [REDACTED], or an explanation why this documentation is unavailable to her.

1. Any indication on Ms. [REDACTED]’s 2014 U.S. tourist visa application that she was in a “common-law marriage” with Mr. [REDACTED] was an error.

The Petitioner was never in a common-law marriage with Mr. [REDACTED] nor did she intend to represent that she ever was in one given her lack of understanding of the legal significance of “common-law marriages”. See Affidavit of [REDACTED] at ¶ 12, attached as Exhibit 5.

The Petitioner completed her 2014 U.S. tourist visa application with the assistance of a non-lawyer at an internet cafe in [REDACTED] Jamaica. See Affidavit of [REDACTED] at ¶¶ 4-6, attached as **Exhibit 5**. Such form-filling services are commonly offered in internet cafes in Jamaica. *Id.* In her sworn affidavit, the Petitioner explains:

It did not cross my mind that it would be an error to respond with “common-law marriage” to the relationship status question on the tourist visa application because, as I mentioned above, I deferred to the staff person helping me with the application. I also did not know that a “common-law marriage” allows couples to be treated in some countries like they are legally married or wedded. If I had understood this legal significance, I would have stopped filling out the tourist visa application and asked around for proper advice on how to answer the relationship question. I only found out the legal significance of a “common-law marriage” after receiving the RFE letter and discussing the letter with my present immigration attorney.

Id., at ¶7.

Therefore, the Petitioner reasonably – but erroneously - relied on the staff person completing her U.S. tourist visa application. Further, the Petitioner did not engage in any wilfull misrepresentation of material information, as no reasonable immigration benefit could accrue to her by indicating she was in a common-law marriage or relationship. In fact, her 2014 U.S. tourist visa application was denied without explanation.

2. Common-law “relationships” are not recognized in Jamaica except for the specific purpose of dividing property and only after a period of cohabitation pursuant to Jamaica’s Property (Rights of Spouses) Act (Act No. 4/2004).

Jamaican law does not recognize common-law relationships except where property is being divided in judicial proceedings after a relationship ends. See Legal Opinion Letter of Mr. Winston A. Douglas, Attorney at Law, attached as **Exhibit 2**, and Property (Rights of Spouses) Act, pt. I, § 2(1) (Act No. 4/2004) (Jam.), attached as **Exhibit 3**. In seeking to divide a couple’s property through judicial intervention, a relationship will be deemed a “common-law relationship” under the law if a man and woman *cohabit for at least 5 years*. *Id.* Specifically, Jamaican property law defines “spouse” to include:

(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years; (b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years, immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.

See Property (Rights of Spouses) Act, pt. I, § 2(1) (Act No. 4/2004) (Jam.), attached as **Exhibit 3**.

3. Common-law “marriages” are not recognized in Jamaica for any purpose; therefore, proof of termination of a common-law marriage does not legally exist.

While common-law *relationships* are recognized under Jamaican law for the limited purpose of property division, common-law *marriages* are not recognized for any reason or purpose. *Id.* In deference to the wedlock rules of the country in which a legal relationship originates, the U.S. Department of State (“DOS”) likewise does not recognize common-law marriages in Jamaica:

While Jamaican law accords some rights to cohabitants, cohabitation *does not create a marital relationship that is valid for purposes of immigration.*

(Emphasis added.) See Marriages, Divorce Certificates – Comments, U.S. Department of State Reciprocity Schedule for Jamaica, attached as **Exhibit 4**; see also Wedderburn v. INS, 215 F.3d 795, 799 (7th Cir. 2000) (looking to Jamaican law to determine marital status of petitioner's parents): “[T]he INS determines the existence, validity, and dissolution of wedlock using the legal rules of the place where the marriage was performed (or dissolved)...”, citing DeSylva v. Ballantine, 351 U.S. 570, 580-82 (1956); Matter of Miraldo, 14 I.&N. Dec. 704 (1974); Matter of M--, 3 I.&N. Dec. 850 (1950).

Thus, the DOS takes the position that individuals cannot file immigrant visa petitions for those deemed common-law spouses in Jamaica because they have no valid marital relationship as a basis for such petitions. It must follow then that such an invalid marital relationship cannot serve as a legitimate legal impediment to entering into a future legal marriage in the U.S. In other words, individuals previously in self-described common-law marriages or common-law relationships in Jamaica are free and clear to lawfully wed in the U.S. without proof of termination of a “common-law marriage.” That is because an individual cannot obtain proof of the legal termination of a relationship that is not even legally recognized in Jamaica.

Mr. Winston A. Douglas, Attorney at Law, practicing in Jamaica, confirms the same:

Common law unions in Jamaica are not considered marriages and any individual who becomes separated from his or her partner in a common law relationship can move on to other relationships or marriage *without any formality.*

(Emphasis added.) See Legal Opinion Letter of Mr. Winston A. Douglas, Attorney at Law, attached as **Exhibit 2**

Therefore, because Ms. [REDACTED] and Mr. [REDACTED] were never in a legally recognized relationship or self-described common-law marriage or common-law relationship, as they were dating without cohabiting, Ms. [REDACTED] cannot obtain proof of termination of a union that never and does not exist under Jamaican law. See *infra* Section 4.

4. Ms. [REDACTED] was never in a “common-law relationship” or “common-law marriage” with Mr. [REDACTED]; thus, she is legally married to her current U.S. citizen husband.

The Petitioner and Mr. [REDACTED] dated for approximately 1 year and never cohabitated at any time. See Affidavit of [REDACTED] at ¶¶ 5, 9, 10, attached as **Exhibit 5**; Affidavit of [REDACTED] at ¶¶ 6-9, attached as **Exhibit 6**; Affidavit of [REDACTED] (Petitioner's lifelong friend), at ¶¶ 8-9, attached as **Exhibit 7**; Affidavit of [REDACTED] (Petitioner's daughter), at ¶¶ 6-8, attached as **Exhibit 8**; and Affidavit of [REDACTED] (Mr. [REDACTED]'s son), at ¶¶ 4-6, attached as **Exhibit 9**. Therefore, the Petitioner was never in a common-law relationship with Mr. [REDACTED] within the meaning of the Property (Rights of Spouses) Act or in any legally recognized relationship with Mr. [REDACTED] under Jamaican law. Thus, the Petitioner had no legal impediments to wedding her current U.S. citizen husband, [REDACTED] and remains lawfully married to him.

Based on the above reasons and enclosed evidence and in the interest of justice, I respectfully request that Ms. [REDACTED] be classified as an abused spouse of a U.S. citizen under VAWA and that her I-360 petition be approved. Please do not hesitate to contact me at my office at (917) 667-4842 [REDACTED]

LAW OFFICE OF
SUSAN THORN

43 West 43rd Street, Ste. 93, New York, NY 10036 | Tel: 917 667 4842 | Fax: 888 830 0136
Thornimmigration@gmail.com | www.Thornimmigration.com

[REDACTED] or via email at Thornimmigration@gmail.com if you have any further questions or concerns. Thank you for your attention to this matter.

Kind regards,

[REDACTED]

Susan Thorn
Attorney at Law

Admitted to practice in New York | U.S. District Courts for EDNY & SDNY

Member | NYC Bar Association | Asian American Bar Association of New York | American Immigration Lawyers Association (AILA)