U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 07 2009

EAC 05 093 52429

IN RE: [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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 denied the petition on the basis of his determination that the petitioner had failed to establish that she had a qualifying relationship with a United States citizen or lawful permanent resident.

Counsel submitted a timely appeal on February 27, 2006.

Section 204(a)(1)(A)(iii) of the Act states, in pertinent part, the following:

> (I) An alien who is described in subclause (II) may file a petition with the [Secretary of Homeland Security] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary of Homeland Security] that –
>
> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien–
>
> (aa) (AA) who is the spouse of a citizen of the United States;
>
> (BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or
>
> (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . ., 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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:

* * *

(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].

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Belarus who entered the United States as the K-1 nonimmigrant fiancé of R-P-,[1] a United States citizen, on December 16, 2003. The petitioner and R-P- were married on March 12, 2004 in Clark County, Nevada. R-P- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on June 10, 2004. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on the same day. On the basis of R-P-'s withdrawal of the petition, the Form I-130 was denied on March 1, 2005.

The petitioner filed the instant Form I-360 on February 9, 2005. The director issued a notice of intent to deny (NOID) the petition on July 20, 2005, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to overcome them. The petitioner responded to the NOID on September 2, 2006, and submitted additional information. After

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

considering the evidence of record, including the response to the NOID, the director denied the petition on February 3, 2006. On appeal, counsel submits a brief.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

In his July 20, 2005 NOID, the petitioner was placed on notice that the director had evidence the petitioner had married J-N-,[2] in Norway, on January 31, 2001, and that there was no evidence the marriage had been terminated. The director noted that the petitioner had never disclosed this marriage to USCIS in any of her applications. In response, the petitioner submitted a Norwegian "divorce license," a letter from J-N-, and an affidavit from the petitioner.

The "divorce license," which was issued on February 2, 2005, states that J-N- and the petitioner have been granted the divorce license, and lists the names that J-N- and the petitioner will use after the granting of the divorce.

In his letter, J-N- states that his marriage to the petitioner was "annulled by default" in February 2001, and that he and the petitioner have had no contact since May 2001. However, no evidence has been submitted to establish that any Norwegian governmental body considered the marriage to be annulled by default, or that marriages in Norway are subject to annulment by default. J-N- also asserts that, in Norway, separation is a marital status that lies between marriage and divorce, which means that he and the petitioner have "not been officially married for years." No evidence has been submitted to back the claim that, in Norway, separation is a marital status between marriage and divorce, nor does the record establish that J-N- and the petitioner filed for separation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

J-N- also states that he will "officially end" the separation status as quickly as possible, and make the couple's "divorce status" final. J-N- states that he mailed divorce papers to the petitioner four years ago, and that she signed and mailed them back. However, he put the documents "in a desk drawer and forgot [about] them."

In her August 21, 2005 letter, the petitioner states that she lost touch with J-N- after she left Norway on February 25, 2001, but that she was recently able to locate and contact him and asked him to immediately follow up on the "automatic annulment" of their marriage. The petitioner states that she never knowingly did anything illegal; and that she was very, very sure that her marriage to J-N- had been invalid. She also states that she had asked R-P- to check on her "Norway situation" before their marriage, and that R-P- assured her that the marriage to J-N- had been dissolved and annulled.

First, the AAO notes that there is no indication in the record that the petitioner's marriage to J-N- was annulled. Again, the document she submits is a divorce license. Further, the AAO notes

[2] Name withheld to protect individual's identity.

that the petitioner was 31 years old at the time of her marriage to J-N-. The AAO also notes that the petitioner was an accountant in Belarus, so she is not an unsophisticated individual. She cannot blame J-N- or R-P- for her own failure to pursue paperwork on her own divorce.

The evidence of record indicates that the petitioner was in fact married to J-N-, and the petitioner has failed to establish that marriage was terminated before her marriage to R-P- in 2004. However, this fact alone does not disqualify the petitioner from establishing a qualifying relationship. Rather, the AAO must look to the law of the place of the petitioner's marriage to R-P- in order to determine the validity of the marriage for immigration purposes. *Matter of Arenas*, 15 I & N Dec. 174 (BIA 1975). In *Arenas*, the beneficiary did not terminate her prior marriage in Mexico until after she married U.S. citizen petitioner in Texas. *Id.* at 174. Texas law provided that a marriage is invalid if either party was previously married and not divorced at the time of remarriage, but that the subsequent marriage becomes valid when the prior marriage is dissolved if the parties have since lived together and represented themselves as husband and wife. *Id.* at 175. The BIA held that the marriage would be valid for immigration purposes on the date of the dissolution of the beneficiary's prior marriage, provided the couple presented evidence of their compliance with the other provisions of the Texas law. *Id.*

In this case, the AAO finds no similar provision under Nevada law which would have allowed the petitioner's marriage to R-P- to have become valid on the date of her divorce (or annulment of the marriage) from J-N-. To the contrary, under Nevada law, a bigamous marriage is void, and no decree of divorce or annulment, or any other legal proceeding, is necessary to end it; the marriage is simply void from its beginning. *See* Nev. Rev. Stat. § 125.290 (2007). Accordingly, the petitioner's procurement of a divorce license[3] in Norway on February 2, 2005 did not cure her defective marriage to R-P-. Rather, the petitioner's marriage to R-P- was void from its inception.

On appeal, counsel repeats the assertion that the petitioner's marriage to J-N- was annulled by default, and states that, to the petitioner's knowledge, her application for marriage license in Norway was never approved; that R-P- assured the petitioner that he had looked into the matter and assured her that her marriage to J-N- had been annulled; and quotes to a policy memorandum that discusses bigamy.

The AAO finds counsel's arguments deficient. First, the AAO notes that with regard to the contention of "annulment by default," as was the case with J-N- and the petitioner, counsel has failed to establish that any Norwegian governmental body considered the marriage to be annulled by default, or that marriages in Norway are subject to annulment by default. Second, counsel's claim that the application for marriage license in Norway was, to the petitioner's knowledge, never approved, is inconsistent with J-N-'s affidavit. As noted previously, J-N- stated that he mailed the petitioner divorce papers in 2001, and that she signed and returned them (J-N- claims to have set them aside and

[3] Further, the significance of this "divorce license" is unclear: the record does not clearly indicate whether this document itself ended the marriage, or whether it is a license which enables the petitioner and J-N- to divorce at a later date.

forgotten about them). It is unclear to the AAO how the petitioner could be uncertain whether or not the application for marriage license was approved if she later signed divorce papers. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Third, counsel's statement that that R-P- assured the petitioner that he had looked into the matter and assured her that her marriage to J-N- had been annulled is deficient. As noted previously, the petitioner cannot place the blame on R-P- for her own failure to ensure that her marriage to J-N- was properly terminated.

Finally, the AAO turns to counsel's citation of a policy memorandum issued by the legacy Immigration and Naturalization Service on August 21, 2002.[4] Counsel's brief suggests his belief that the petitioner may establish a qualifying relationship with R-P- even if she was subject to bigamy, so long as she in good faith believed she was married to him. The AAO disagrees. That policy memorandum, and the regulatory criteria discussed therein, pertain to situations where the U.S. citizen or lawful permanent resident spouse was the one committing bigamy, not the petitioner. In such situations, the petitioner must establish that he or she believed the U.S. citizen or lawful permanent resident spouse had been eligible to enter into valid marriage. This policy memorandum, and the regulatory criteria discussed therein, provide no relief to the petitioner, as there is no indication in the record that R-P- was married to another individual at the time of the marriage.

The AAO concurs with the director's finding that the petitioner has not established that she had a qualifying relationship with a United States citizen or lawful permanent resident. Therefore, she is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

The petitioner has failed to establish that she had a qualifying relationship with a United States citizen or lawful permanent resident. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

[4] Memorandum from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, *Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S. Citizen or Lawful Permanent Resident*, HQADN/70/8 (August 21, 2002).