

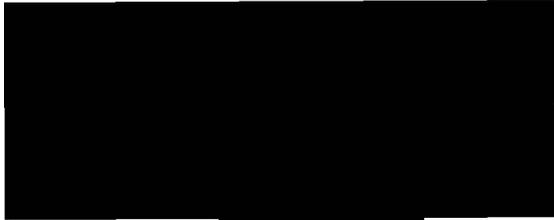
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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
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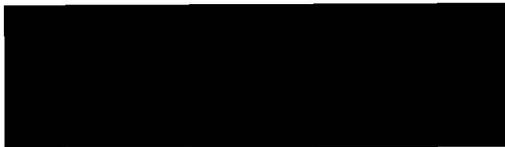
EAC 06 045 50580

Office: VERMONT SERVICE CENTER

Date: JAN 26 2009

IN RE:

Petitioner:



PETITION: Petition for Special 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)

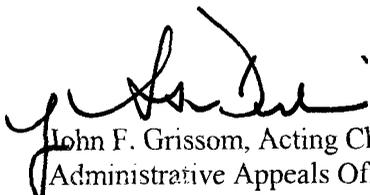
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 Director, Vermont Service Center, denied the immigrant visa petition. 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 finding that as the petitioner failed to establish the validity of a prior divorce she was not able to establish that she had a qualifying marriage as the spouse of a United States citizen and that she was eligible for immigrant classification based upon such a qualifying relationship.

The petitioner, through counsel, submits a timely appeal.

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

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 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:

*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 file by a spouse must 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 petitioner is a native and citizen of India. On January 26, 1997, the petitioner married her first husband, G-B-,<sup>1</sup> in a Hindu ceremony in India. According to the petitioner's November 19, 2005 declaration, the petitioner and G-B-remarried each other in an Islamic ceremony in July 1999. On May 10, 2002, G-B- obtained a "talaq" divorce under Islamic law. He and the petitioner then filed a petition for divorce under Hindu law on July 2, 2002. The petitioner married Z-A-,<sup>2</sup> a United States citizen in India on October 22, 2002. The petitioner's Hindu divorce from G-B- became final on November 1, 2002. The petitioner entered the United States on April 29, 2004, on a K-3 nonimmigrant visa, as Z-A-'s spouse and on November 25, 2005, the petitioner filed the instant Form I-360.

On February 9, 2006, the director issued a Notice of Intent to Deny (NOID), in which the director stated:

The divorce decrees from your first marriage that were submitted show[] that you were religiously divorced on May 10, 2002, and that you were civilly divorced on November 1, 2002 – or four (4) days after your marriage to [Z-A-].

Although your religious divorce is recognized in India as a legal divorce, this is not recognized as a legal divorce for immigration purposes. In order for the legal termination of a marriage to be considered valid for immigration purposes, it must have been registered with a civil authority. Your divorce was not civilly registered until after you married [Z-A-]. Therefore, your marriage to [Z-A-] is not considered to be valid, for immigration purposes.

[Emphasis in the original].

The petitioner, through her former counsel, timely responded to the director's NOID. Included in the petitioner's response was a copy of the petitioner's "talaq" divorce. The director denied the petition on July 7, 2006. While the director again found that the petitioner's "civil divorce" did not occur until after the petitioner's marriage to Z-A-, the director did not discuss the petitioner's "talaq" divorce or its effect, if any, on the petitioner's prior marriage. The petitioner, through her former counsel submitted a timely appeal with additional evidence.

On appeal, former counsel stated that the "Muslim Law as practiced in India recognizes 'talaq' as a final termination of marriage" and argued that under Indian law, the petitioner's "talaq" divorce was valid prior to her marriage to Z-A-. Although former counsel also cited portions of the Muslim Personal Law (Shariat) Application Act of 1937 and provided an opinion from [REDACTED], High Court, Lucknow, India to support the assertion that the petitioner's Islamic divorce effectively terminated her marriage to G-B-, former counsel offered no discussion regarding the status of the petitioner's Hindu marriage or any argument regarding the effect that the Islamic marriage had on

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Name withheld to protect individual's identity.

the Hindu marriage, if any.

As the determination in this case necessitated an understanding of the civil and religious laws of a foreign country, the AAO sought the expertise of the Library of Congress (LOC). In a letter dated, July 9, 2008, the AAO asked the LOC to analyze whether the petitioner's Islamic marriage had any effect on her original Hindu marriage. In addition, the AAO requested the LOC to address whether the petitioner's Islamic divorce terminated both the Islamic and Hindu marriages, or, whether it had no effect on the Hindu marriage at it was the original, legally recognized marriage.

The LOC's August 8, 2008 response indicated that the petitioner's Islamic marriage "did not have an impact on the bonds of their Hindu marriage," and that the Hindu marriage "was not affected by the repudiation of the Islamic marital tie." Specifically, the LOC letter stated, "a marriage solemnized under a particular statute cannot be dissolved according to the principles of another personal law." The LOC specifically determined that the petitioner's Muslim divorce "did not dissolve the Hindu marriage," and concluded that "the husband's pronouncement of the Islamic divorce on May 10, 2002, dissolved *only* the Muslim marriage [emphasis added]." The LOC also referenced several "legal infirmities" in the court's decision and found that even if the petitioner's Hindu divorce occurred on a date prior to her marriage to Z-A-, the divorce was not in accordance with the Hindu Marriage Act of 1955, and therefore, could not be legally recognized.

In a letter dated November 6, 2008, the AAO notified the petitioner of the LOC's findings and provided her the opportunity to submit further evidence and arguments in support of her petition. The petitioner, through current counsel, responded to the AAO's notice on December 16, 2008. In his response, counsel states that the LOC's opinion "is an incorrect interpretation of the law." Counsel then argues that because the "petitioner's first marriage was performed and dissolved according to Muslim Personal Law after both the petitioner and her first husband had changed their religion [h]er second marriage was valid because it was performed after the first marriage was dissolved." Counsel further states:

[T]he Hindu Marriage Act would not be applicable because both the petitioner and her first husband had changed their religion, married under the Muslim Personal law and then a few years later divorced according to Muslim Personal Law. The two experts state that the divorce petition under the Hindu Marriage Act was redundant and unwanted because the earlier divorce was legally valid.

To support his argument, counsel submits two letters from "experts of the law of India," [REDACTED] and [REDACTED], a retired judge of the State High Court of India. Both of the letters argue for the validity of the Muslim divorce. We note at the outset that we do not dispute that if the Muslim marriage were the petitioner's and G-B-'s only marriage, we would not question the validity of the Muslim divorce. In this instance, however, while the petitioner's experts opine that the petitioner's Muslim divorce was valid under the laws of India, they make this determination without any specific discussion regarding the status of the Hindu marriage at the time of the Muslim marriage. For instance, [REDACTED] who practices in India, recites the provisions of the Hindu Marriage Act cited in the LOC opinion and generally states that upon their marriage under Islamic law the

provisions of Hindu law “were not applicable” to the petitioner and G-B-. Counsel devotes a major portion of his brief attempting to distinguish the petitioner’s case from *Sarla Mudgal v. Union of India* (1995) 3 S.C.C. 635, a case footnoted in the LOC opinion. Counsel [REDACTED] and [REDACTED] focus on the fact that only one of the parties in *Sarla* converted religions and argue that because both the petitioner and G-B- converted to Islam, the facts are inapposite. Counsel also argues that because the court in *Sarla* found that a marriage solemnized by a Hindu husband after converting to Islam “may not be strictly a void marriage under the Act” because he is no longer a Hindu “means that when both the petitioner and her former husband became Muslims and performed a Muslim wedding and divorced according to the Muslim religion, then there [was] no requirement for them to divorce according to the Hindu Marriage Act. While counsel, [REDACTED] and [REDACTED] attempt to distinguish the facts of the instant case from *Sarla*, none provides any additional citation or legal argument to support their claim that because both parties converted to Islam, the Hindu law was not applicable to the petitioner and G-B-. In fact, the *Sarla* court noted just the opposite stating:

The doctrine of indissolubility of marriage, under the traditional Hindu law, did not recognize that conversion would have the effect of dissolving a Hindu marriage. *Conversion to another religion by one or both the Hindu spouses did not dissolve the marriage.*

[Emphasis added.]

The *Sarla* court further noted an earlier case, *Andal Vaidyanathan vs. Abdul Allam Vaidya 1946 Madras*, in which the Division Bench of the High Court in India considered a marriage under the Special Marriage Act of 1872 where the court held:

[W]here two persons married under the Act subsequently converted to Islam, the marriage can only be dissolved under the provisions of the Divorce Act and the same would apply even if only one of them becomes converted to Islam.

The *Sarla* court then stated that this position “has not changed after coming into force of the Hindu Marriage Act, 1955 . . . rather it has become worse . . .”

Accordingly, counsel has failed to overcome the findings of the LOC that the “solemnization of the parties’ Islamic marriage . . . did not have an impact on the bonds of [the] Hindu marriage” and that the Hindu marriage was “not affected by the repudiation of the Islamic marital tie.”

In the alternative, counsel appears to argue that even if the petitioner’s marriage to G-B- was not considered to be terminated prior to her marriage to Z-A-, her marriage to Z-A- became valid retroactively when the court granted divorce under the Hindu Marriage Act on November 1, 2002. Counsel cites to the fact that the Michigan court granted Z-A- a divorce rather than an annulment and states that had the court found the marriage not to be valid, it would have granted an annulment. Counsel also submits a photocopy of an excerpt from a book entitled *Laws of Marriage and Divorce* and cites to three cases which he purports support his argument that the petitioner’s marriage to Z-A-

became retroactively valid upon the termination of the Hindu marriage. Counsel's arguments are not persuasive. Although counsel submits a copy of Z-A-'s Complaint for Annulment, in which Z-A- alleged that their marriage was "solemnized based on a fraudulent representation" by the petitioner, counsel fails to submit the petitioner's cross complaint. Moreover, the Judgment of Divorce contained in the record indicates that the judgment for divorce was made based upon "an agreement [between the petitioner and Z-A-] relative to the disposition of all matters at issue" made after negotiation and representation of counsel by both parties. As such, the record contains no evidence that the court made any determination regarding the validity of the marriage based upon the laws of India but instead determined the divorce proceedings based upon an undocumented agreement reached by the petitioner and Z-A-.

The cases cited by counsel from the *Laws of Marriage and Divorce* indicate only that under Muslim Personal Law, marriages do not require any writing, any religious ceremony, or any witnesses and that couples are presumed to be married if they live together as husband and wife and the man acknowledges the woman as his wife. Counsel does not provide any further information about this book or demonstrate that the cases cited in this book, which appears to be about Muslim marriage and divorce laws in general, are recognized under the laws of India. Therefore, while we do not dispute what may be required or not required to be considered a valid marriage under Muslim Personal Law, none of the cases cited by counsel specifically indicate that retroactive divorces are recognized under Indian law or Muslim Personal Law.

Accordingly, as the petitioner has failed to establish that her divorce from G-B- was valid and recognized under the laws of India at the time she marriage Z-A- or in the alternative that retroactive divorces are recognized in India, we do not need to reach the final issue regarding the "legal infirmities" of the petitioner's Hindu divorce.

The law of a foreign country is a question of fact which must be proved by the petitioner if he relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). As discussed above, the evidence contained in the record fails to establish that the petitioner properly terminated her prior marriage in India before her marriage to Z-A-. Accordingly, the petitioner has failed to establish that she had a qualifying marriage as Z-A-'s spouse and that she was eligible for immigrant classification based upon that relationship.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.