U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: DEC 19 2014 Office: VERMONT SERVICE CENTER File:

IN RE: Petitioner:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse.

On December 16, 2013, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. citizen or lawful permanent resident and is eligible for immigrant classification based upon such a relationship.

On appeal, counsel for the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 further 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 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 . . . .

Facts and Procedural History

The petitioner is a native and citizen of Mexico. In her affidavit, dated January 14, 2014, the petitioner indicated that she participated in three marriage ceremonies with three separate men: the first was to R-O-[1] on 1989 in Mexico; her second marriage was to J-R-[2] at the county courthouse in TX on 1993; and on 2008, she married P-B-,[3] a U.S. citizen and her claimed abusive spouse, in TX.

On , 2013, the marriage between the petitioner and P-B- was terminated in a divorce action in Texas. On March 14, 2013, the petitioner filed the instant Form I-360. On October 28, 2013, the director requested, in part, that the petitioner submit proof of the termination of her prior marriages. In response, the petitioner submitted a divorce decree dated 2008, terminating her marriage to R-O-, her first husband. She indicated that she married her second husband without obtaining a divorce from her first husband, and that she did not divorce her second husband on advice of counsel, as the second marriage was void.

On December 16, 2013, the director denied the petition because the self-petitioner did not establish the termination of her marriage to J-R-, her second husband, and thus she did not establish a qualifying relationship with P-B-, the U.S. citizen abusive spouse.

Qualifying Relationship

The petitioner contends that the evidence demonstrates that her first marriage was dissolved and her second marriage was void, and as such that she was legally able to enter into a valid marriage with P-B- and that she had a qualifying relationship with P-B-. We agree with the petitioner that the evidence establishes that her marriage to J-R- was void.[4] The Texas Family Code, V.T.C.A. Family Code, § 6.202, provides that:

> (a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.[5]

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[1] Name withheld to protect the individual's identity.
[2] Name withheld to protect the individual's identity.
[3] Name withheld to protect the individual's identity.
[4] On appeal, the petitioner submits, in part, a statement from the Texas Department of State Health Services, certifying that it cannot find any record of a marriage application for the petitioner and J-R-, her second husband, from , 1993 to the present. The petitioner continues to maintain in her affidavit on appeal, dated January 14, 2014, that she entered into an invalid marriage with J-R- on 1993. Whether or not the petitioner actually married J-R- in a civil ceremony sanctioned by the state, the record establish that her first marriage was not dissolved as of 1993, and any marriage to J-R- would have been void.
[5] Texas Family Code, V.T.C.A. Family Code, § 6.307 says that a party to a void marriage may sue to have the marriage declared void, but a judicial determination is not required.

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

The record establishes that the petitioner married R-O- in Mexico on 1989, and that she divorced him on 2008 in Texas. As the petitioner's first marriage was not terminated when she claims to have married J-R-, her marriage to J-R- was void under V.T.C.A. Family Code § 6.202(a). Further, the petitioner's second marriage would not have become valid under V.T.C.A. Family Code § 6.202(b) upon the dissolution of her first marriage in 2008, because the record reflects that she left J-R- in 1998.

Nevertheless, we agree with the director that the record does not establish the petitioner's qualifying relationship with the U.S. citizen abusive spouse. There is another provision of Texas law under which the petitioner's marriage to P-B- is invalid.[6] V.T.C.A. Family Code §§ 6.801 and 6.802 provide, in pertinent part, that:

Sec. 6.801. *Remarriage.* Except as otherwise provided by this subchapter, neither party to a divorce may marry a third party before the 31st day after the date the divorce is decreed.

Sec. 6.802. *Waiver of Prohibition against remarriage.* For good cause shown the court may waive the prohibition against remarriage provided by this subchapter as to either or both spouses . . .

The petitioner's marriage to R-O- was terminated in a Texas court on 2008, and her remarriage to P-B- occurred on 2008, within the waiting period when remarriage to a new person is prohibited by Texas law. The record does not indicate that the petitioner obtained a waiver of the prohibition against remarriage. As such, under Texas law, the petitioner's marriage to P-B- is invalid.

Conclusion

The record establishes that the petitioner entered into a marriage with P-B- within 31 days of her divorce from R-O-. Thus, her marriage to P-B- is not valid. The petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N

[6] We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.