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: AUG 05 2015

FILE #:
PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

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

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 ex-spouse.

The director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the petitioner had not established a qualifying relationship with her U.S. citizen ex-spouse and that she was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. On appeal, the petitioner submits a brief.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 clause (ii) or (iii) of subparagraph (B) 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, in pertinent part:

> (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].

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:

> (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, if any, of . . . the self-petitioner . . . .

An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien 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." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Facts and Procedural History

The petitioner, a native of Liberia and citizen of Italy, last entered the United States on December 12, 2002 as an F-1 student visa holder. She married P-A-,[1] a U.S. citizen, on in , Minnesota. She divorced him in Minnesota on . The petitioner filed the instant Form I-360 on July 8, 2013. The director issued a Request for Evidence (RFE) of the petitioner's divorce from her first husband, F-B-,[2] and the validity of her marriage to P-A-. In response to the RFE, the petitioner submitted a brief, a personal affidavit, and a letter from the attorney who represented her in her divorce from P-A-. The director found the evidence insufficient to establish that the petitioner's divorce from F-B- in Liberia and her subsequent marriage to P-A- were valid. Accordingly, the director denied the petition. The petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal demonstrates that the petitioner has a qualifying relationship with P-A- and that she is eligible for corresponding immigrant classification under section 201(b)(2)(A)(i) of the Act. Therefore, she has overcome the grounds for the director's denial and we will sustain the appeal.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

The petitioner has demonstrated a qualifying relationship with P-A- and that she is eligible for immigrant classification under 201(b)(2)(A)(i) of the Act. The director's finding to the contrary will be withdrawn.

The validity of a marriage for immigration purposes is determined by the law of the place in which the marriage was celebrated. *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987). Where a spouse was previously divorced, the law of the state where the subsequent marriage occurred also governs the validity of the prior divorce for immigration purposes. *Id.* The petitioner married P-A-

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

in Minnesota, so Minnesota law applies when determining whether the marriage was valid for immigration purposes.

The director found, based on information from the U.S. Department of State, that the petitioner had not established that she or F-B- were domiciled in Liberia at the time of their divorce, and that the divorce, therefore, was not valid under Liberian law. Consequently, the director concluded that the divorce and the petitioner's subsequent marriage to P-A- were invalid pursuant to Minn. Stat. Ann. § 517.03, which requires that a divorce must be valid in the jurisdiction in which it takes place. However, the evidence of record indicates that the District Court of the State of Minnesota, County of considered the petitioner's Liberian divorce and subsequent marriage valid, and therefore granted her divorce from P-A- in Minnesota.

As evidence of her divorce from her first husband, F-B-, the petitioner submitted in the proceedings below photocopies of the following: a Bill of Divorcement from Liberia indicating that she and F-B- were divorced on ; a Court's Final Judgment of divorce from the Court, , Liberia; an affidavit of the Justice of the Peace for County, Liberia confirming that the Bill of Divorcement and Court's Final Judgment of divorce "are records of the said Circuit Court . . . and that they are legal and binding in [sic] according to the laws of the Republic of Liberia"; a receipt from the Liberian Ministry of Finance indicating that the petitioner paid a required Divorce Tax Fee; three receipts of mailings addressed to F-B- in Italy; and three Legal Notices published in Liberian newspapers, listing Writs of Summons for F-B- to appear to answer the petitioner's complaint for divorce.

Additionally, the petitioner submitted a personal affidavit in which she stated that F-B- was aware of her divorce complaint in Liberia, that notices of the complaint were mailed to him in Italy, and that he told her by telephone that he had received the notices and did not intend to contest the divorce. The petitioner also asserted that, during her divorce from P-A- in Minnesota, P-A-'s attorney requested evidence of her Liberian divorce from F-B-. She further claimed that the court in Minnesota found no problems with the Liberian Bill of Divorcement and granted her divorce from P-A-. The petitioner also submitted a letter from the attorney who represented her in her divorce from P-A-, who stated that P-A- initially contested the validity of the Liberian divorce but later conceded that the divorce was valid. As a result, contends that the court that granted the divorce in Minnesota did not rule on the validity of the Liberian divorce in a contested hearing, but "implicitly found the Liberian divorce . . . valid because if it had not, [the petitioner] would not be divorced from [P-A-] as that marriage would be void."

The petitioner also submitted a photocopy of the Marriage License Application that she and P-A- filed in County, Minnesota. The Marriage License Application indicates that the petitioner was previously married and that the marriage ended in dissolution in , Liberia. It also contains a handwritten notation under the information regarding her Liberian divorce which states, "Viewed Bill of Divorce." Additionally, the petitioner provided her Marriage Certificate, which was recorded in County on March 21, 2011.

With regard to her Minnesota divorce from P-A-, the petitioner submitted a printout of a Register of Actions indicating that dissolution was granted on February 22, 2013. She also provided a

photocopy of a Stipulated Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree (Divorce Decree), signed by the petitioner, P-A-, their attorneys, the Referee of the District Court, and the Judge of the District Court, County, Minnesota. The Divorce Decree states that the petitioner and P-A- "were duly married to each other on , in . . . Minnesota, and ever since that date have been and now are wife and husband." The Divorce Decree further notes, "The parties agree they were married in Minnesota and that a marriage dissolution action is the appropriate action to take in dissolving their marriage." Under "Conclusions of Law," the Divorce Decree states, "The bonds of matrimony heretofore existing between the parties are hereby dissolved under the laws of Minnesota."

Minn. Stat. Ann. § 517.03 (West 2013) provides, in pertinent part:

> Subdivision 1. General. The following civil marriages are prohibited:
>
> (1) a civil marriage entered into before the dissolution of an earlier civil marriage of one of the parties becomes final, as provided in section 518.145 or by the law of the jurisdiction where the dissolution was granted . . . .

According to Minn. Stat. Ann. § 518.01 (West 2012), in pertinent part, "All marriages which are prohibited by section 517.03 shall be absolutely void, without any decree of dissolution or other legal proceedings . . . ."

Minn. Stat. Ann. § 518.06 (West 2015) provides the following regarding the meaning and effect of a divorce[3] in Minnesota:

> A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. . . . A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

Under Minnesota law, "[w]hen the fact of marriage is required or offered to be proved before any court, evidence of the admission of such fact by the party against whom the proceeding is instituted" is considered competent evidence. Minn. Stat. Ann. § 602.02 (West 2015); *Ma v. Ma*, 483 N.W.2d 732, 735 (Minn. Ct. App. 1992). The Minnesota Court of Appeals has noted that "[w]hen evidence of a marriage is shown, a strong presumption of its legality arises." *Ma v. Ma*, 483 N.W.2d at 735 (citing *In re Lando's Estate*, 127 N.W. 1125, 1128 (1910)). Additionally, according to the Supreme Court of Minnesota, "when in the court of a state an action for divorce is brought, and a decree of divorce rendered, the court is presumed to have determined the facts essential to its jurisdiction . . . ." *Ellis v. Ellis*, 55 Minn. 401, 410 (1893).

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[3] "Wherever the word 'divorce' is used in the statutes, it has the same meaning as 'dissolution' or 'dissolution of marriage.'" Minn. Stat. Ann. § 518.002 (West 2015).

In the instant case, the petitioner has demonstrated through her Minnesota Divorce Decree that P-A- admitted to the fact that they were married, thus satisfying Minn. Stat. Ann. § 602.02 as competent evidence of the marriage. This creates a "strong presumption" that the marriage was legal. *Ma v. Ma*, 483 N.W.2d at 735. Additionally, the issuance of the Divorce Decree by the District Court of County, Minnesota, which includes a legal conclusion that the parties were joined in "bonds of matrimony" which were subsequently dissolved, indicates that the District Court determined that the marriage being dissolved was valid. *See* Minn. Stat. Ann. § 518.06. Furthermore, if the petitioner's marriage to P-A- were prohibited pursuant to Minn. Stat. Ann. § 517.03 as a result of her Liberian divorce not being final, it would have been "absolutely void, without any decree of dissolution or other legal proceedings" and divorce proceedings would not have been necessary. Minn. Stat. Ann. § 518.01. The fact that the District Court issued a Divorce Decree establishes that the petitioner's marriage to P-A- was not considered void under Minnesota law.

The petitioner has also demonstrated that her divorce from P-A- was connected to the battery or extreme cruelty she suffered during her marriage, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The director concluded in her denial that the petitioner had established battery or extreme cruelty by P-A-. The petitioner also submitted a detailed personal affidavit in which she describes the physical, sexual, and emotional abuse perpetrated against her by P-A- during their marriage, and her decision to divorce him after spending time in a women's shelter and learning that she was the victim of abuse. She further states that she has continued to experience abusive and threatening behavior by P-A- since their divorce, in the form of false accusations in court and mistreatment of the couple's daughters during P-A-'s visitation with them. A letter from "a shelter for homeless battered women and their children," also indicates that the petitioner arrived at the shelter with her children after fleeing her abusive relationship.

Therefore, the petitioner has established that she has a qualifying relationship as the ex-spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

The record demonstrates by a preponderance of the evidence that the petitioner has a qualifying relationship with P-A- and is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. Accordingly, she has overcome the grounds for the director's denial and has demonstrated eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In these proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.