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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 0 7 2015 Office: VERMONT SERVICE CENTER File:

IN RE: Self-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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, ("the director") denied the immigrant visa 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.

The director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. citizen.

On appeal, 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 explained 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 ... 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 ....

Facts and Procedural History

The petitioner is a citizen of Morocco who was last admitted to the United States on October 25, 2004 as a visitor. The petitioner married H-A-[1], a U.S. citizen, on August Virginia. On May H-A- obtained a Decree of Annulment of Marriage in the Circuit Court of County, Virginia, with a finding that the petitioner's divorce from her first husband, N-S-[2], was not finalized with the civil authorities until March 28, 2011, and that the marriage between the petitioner and H-A- was void. The petitioner filed the instant Form I-360 self-petition on September 30, 2013. The director subsequently issued a Request for Evidence (RFE) for the petitioner's termination of her first marriage to N-S- prior to her marriage to H-A-. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. Upon review, the petitioner's appeal does not overcome the director's ground for denial for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of all the self-petitioner's prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). A divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982).

The director in the RFE referred to an Islamic Certificate of Divorce obtained on February and requested evidence that the petitioner divorced N-S- in a civil court prior to her marriage to H-A-. In response, the petitioner submitted, in part, copies of the Moroccan Family Code, which she stated indicated that the Islamic divorce decree was binding between her and N-S-. The petitioner contends that under Article 128 of the Moudawana (Moroccan Family Code), neither party has to reside or be domiciled in Morocco to obtain a valid divorce decree enforceable in Morocco. However, the petitioner does not demonstrate how her divorce decree with N-S- is valid. The Islamic Certificate of Divorce was issued by an Imam and not by a foreign court or civil servant, nor does it contain the notation that it is enforceable in conformity with the Civil Procedure Code as required by Article 128. Further, the Islamic decree was not obtained in accordance with the procedures of the which require a civil divorce to be presented to the Imam.

In addition, Article 138 of the Moroccan Family Code contemplates a civil court proceeding to render a divorce final. Article 138 provides that the divorce must be certified before two specialized public notaries, after the court authorizes it and after submission of the marriage record. The translation of the Written Reading of an Islamic Certificate of Divorce indicates that it was registered under number 244 in the record of marriages and divorces, number 84, on March 11, 2011, in the Ministry of Justice, Kingdom of Morocco.

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

This certificate is the petitioner's civil divorce decree, and was not issued prior to the petitioner's marriage to H-A- on August 23, 2010.

On appeal, the petitioner asserts that the divorce on February was obtained before the in Virginia in accordance with the law of Morocco and that the director erred in determining that Morocco did not have personal jurisdiction over the petitioner and N-S-'s divorce.[3] The petitioner further asserts that the annulment of her marriage to H-A- was based on his fraud and abuse. Notwithstanding the petitioner's credible testimony that she thought her marriage to N-S- was legally terminated when she married H-A- and that their subsequent annulment was obtained as part of the abuse, the Circuit Court in VA has declared void the petitioner's marriage to H-A-, and granted an annulment.[4] The Board of Immigration Appeals (BIA) in *Matter of Arenas*, 15 I & N Dec. 174 (BIA 1975), stated: "[i]n determining the validity of a marriage for immigration purposes, the law of the place of celebration of the marriage will generally govern." As the marriage to H-A- is not valid under the jurisdiction of the state where the marriage was celebrated, the petitioner does not have a qualifying relationship with a U.S. citizen. Further, in Virginia, marrying a second person when the first spouse is still alive is a criminal offense punishable as a Class 4 felony. *See* VA Code Ann. § 12.2-364. Under Virginia law, a bigamous marriage is absolutely void. VA Code Ann. § 20-43. There are no provisions under Virginia law that allow for a bigamous marriage to be made valid by a subsequent termination of a prior marriage. Consequently, the petitioner's marriage to N-S- was void from its inception and this defect cannot be remedied. Accordingly, 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)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not have a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based upon such a relationship.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that

[3] The Islamic Certificate of Divorce was issued by the , with no address listed. A search of the internet reveals a The website indicates that in order to obtain a divorce, you must supply both the marriage certificate and the civil divorce papers. *See,* http://www. (accessed December 12, 2014).

[4] The petitioner asserts that H-A- made her sign a document waiving service and agreeing not to contest the annulment, and that this action was part of the abuse she suffered. The petitioner, however, must contest the ruling in the Circuit Court of

burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.