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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

Date:

JAN 16 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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“the director”), 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 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 a United States citizen.

The director denied the petition determining that the petitioner had failed to establish a qualifying relationship as the spouse of a United States citizen, and her corresponding eligibility for immediate relative classification.

Applicable 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, 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].

* * *

The evidentiary standard and 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.

(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

Pertinent Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who states that she entered the United States on May 11, 1990 without inspection. The petitioner married T-S-¹, a United States citizen, on September [REDACTED]. The petitioner filed the instant Form I-360 petition on April 25, 2013. The director subsequently issued a Request for Evidence (RFE) of the termination of the petitioner's prior marriage to L-O-². The petitioner responded to the RFE but the director denied the petition, finding the evidence insufficient to establish the termination of the petitioner's marriage to L-O-. Accordingly, the director determined that the petitioner failed to establish a qualifying spousal relationship and corresponding eligibility for immediate relative classification.

We review these proceedings *de novo*.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, the petitioner does not dispute the director's finding regarding her previously submitted documentation. Rather, the petitioner submits new documents from the Matrimonial/IAS Part of the New York State Supreme Court, indicating that a judgment of divorce was entered between L-O- and the petitioner on March [REDACTED].

On appeal, the petitioner argues that although her uncontested divorce from L-O- in Puerto Rico was not finalized, her subsequent marriage to T-S- in New York is valid because she married T-S- in good-faith and terminated her marriage to L-O- in New York on March [REDACTED]. The validity of a marriage for immigration purposes is determined by the law of the place in which the marriage is performed. *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). The petitioner cites *Grabois v. Jones*, asserting that New York courts attach a strong presumption of validity to a second marriage when confronted with the claim that the second marriage is invalid because of the existence of a valid first marriage. 89 F.3d 97, 100 (2d Cir. 1996).

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

The presumption in favor of a second marriage is rebutted, however, where it is established that the first marriage was still valid at time of the second marriage. *See Metro. Life Ins. Co. v. Jackson*, 896 F. Supp. 318, 323 (S.D.N.Y. 1995). In the instant case, the record contains no evidence that the petitioner divorced L-O- prior to marrying T-S-. In fact, as presented on appeal, the petitioner did not divorce L-O- until well after she married T-S- and filed the instant petition. Thus, the presumption of validity which attached to her marriage to T-S- is overcome. The petitioner entered into a valid marriage with L-O- and the decree of divorce in the record establishes that their marriage remained undissolved until it was legally terminated on March [REDACTED]. As the petitioner's marriage to L-O- was still valid when she married T-S-, her subsequent marriage to T-S- is void. Section 6 of the New York Domestic Relations Law "states unambiguously that a second marriage is invalid if either of the parties to that marriage is already married." A second marriage that is invalid cannot be validated by estoppel, by mutual agreement, or by the parties' conduct in holding themselves out as husband and wife. *Lipschutz v. Kiderman*, 76 A.D3d 178, 182-83. Consequently, the petitioner's marriage to T-S- was void from its inception and its defect cannot be remedied. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with 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.

The burden of proof in these proceedings rests solely with the petitioner. 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). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.