

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: **JAN 27 2015** Office: VERMONT SERVICE CENTER File: [Redacted]

IN RE: Self-Petitioner: [Redacted]

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:

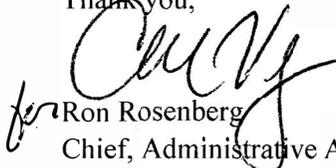
[Redacted]

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 Vermont Service Center acting director (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.

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 for the petitioner's failure to establish a qualifying spousal relationship with a U.S. citizen, eligibility for immediate relative classification based on this relationship, and entry into the relationship in good faith.

On appeal, the petitioner, through counsel, 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 eligibility requirements 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)(1), which states, 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].

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of

circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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 . . . .

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

### *Facts and Procedural History*

The petitioner, a citizen of Mexico, represents that he entered the United States in 1995 without inspection, admission, or parole by an immigration officer. The petitioner married A-T-<sup>1</sup> on July [REDACTED] Virginia. The petitioner represents that the couple had two children and separated in approximately [REDACTED]. On July [REDACTED] the petitioner married K-C-<sup>2</sup>, a U.S. citizen, in [REDACTED] North Carolina. The couple returned to Virginia, where they resided, and their daughter was born on April [REDACTED]. The petitioner represents that K-C- abandoned the relationship in December of [REDACTED]. The petitioner filed the instant Form I-360 self-petition on August 3, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's qualifying relationship, eligibility for immediate relative classification based on that relationship, and good-faith entry into the relationship, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought and denied the petition. The petitioner, through counsel, appealed the director's decision.

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

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

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Request for Oral Argument*

The petitioner requests an oral argument before the AAO. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for an oral argument. See 8 C.F.R. § 103.3(b). We grant such requests only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the written record of proceeding fully represents the relevant facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

*De novo* review of the record reveals that the director did not err in finding that the petitioner did not establish a qualifying relationship to a U.S. citizen. In his initial submission with his Form I-360 self-petition, the petitioner provided a Commonwealth of Virginia marriage register showing that he married A-T-, his first spouse, in Virginia in [REDACTED]. In a personal affidavit dated March 20, 2012, the petitioner indicated that he met K-C- in [REDACTED] after the disintegration of his first marriage. He stated that after he and K-C- decided to marry, he advised K-C- that he needed to obtain a divorce from A-T-. The petitioner recounted that K-C- told him that she would take care of it and when he later asked her about the divorce, K-C- told him that she had gone to the court, posted a notice, and that the divorce had been finalized. The petitioner indicated that he was initially skeptical that he was not required to sign any documents to effectuate the divorce, but ultimately believed K-C-'s assurances that he was divorced from his first wife. The petitioner signed a North Carolina marriage license indicating that his marriage to K-C- would be his *first* marriage, and married K-C- in [REDACTED] North Carolina. The petitioner indicated that he learned while preparing his immigration applications that he was not actually divorced from A-T-, his first wife.

The issue in this matter is whether the petitioner's marriage to K-C- is valid, thus creating a qualifying spousal relationship. As observed by the Board of Immigration Appeals (BIA), "[i]n determining the validity of a marriage for immigration purposes, the law of the place of celebration of the marriage will generally govern." See *Matter of Arenas*, 15 I&N Dec. 174, 174 (BIA 1975). The petitioner celebrated his marriage to K-C- in North Carolina, where bigamy is a criminal offense, defined and punished as follows, in pertinent part:

If any person, being married, shall marry any other person during the life of the former husband or wife, every such offender, and every person counseling, aiding or abetting such offender, shall be punished as a Class I felon.

Nothing contained in this section shall extend to any person marrying a second time... who at the time of such second marriage shall have been lawfully divorced from the

bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

N.C. GEN. STAT. ANN. § 14-183 (West 2014).

Here, the petitioner was not lawfully divorced from his first wife at the time that he married K-C-, and thus committed bigamy. On appeal, the petitioner asserts that it was K-C- that committed bigamy by “counseling, aiding or abetting” him in his bigamous marriage to her, and not the petitioner himself, because he relied on K-C-’s assurances that he was divorced. However, the plain language of the statute clearly encompasses the petitioner’s behavior, and contains no *mens rea* requirement. Whether or not the petitioner was aware that he was still married to his first wife at the time that he married K-C- is not relevant; under North Carolina law, “[b]igamy is an offense, even unwittingly committed.” See *State v. Lynch*, 272 S.E.2d 349, 354 (N.C. 1980). A bigamous marriage in North Carolina is void. See *Fulton v. Vickery*, 326 S.E. 2d 354, 358 (N.C. Ct. App. 1985)(citing *Redfern v. Redfern*, 270 S.E. 2d 606 (N.C. Ct. App. 1980)). There are no provisions under North Carolina law that allow for a bigamous marriage to be made valid by a subsequent termination of a prior marriage, and common law marriage is not recognized in either North Carolina or Virginia, the state in which the petitioner and K-C- resided. See N.C. GEN. STAT. ANN. § 51-1 (West 2014); VA. CODE ANN. § 20-13 (West 2014). Consequently, the petitioner’s marriage to K-C- was void from its inception and this defect cannot be remedied. Accordingly, the petitioner has not established that he had a qualifying relationship as the spouse of a U.S. citizen and that he 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.

*Good-Faith Entry into the Relationship*

*De novo* review of the record demonstrates by a preponderance of the relevant evidence that the petitioner entered into his intended marriage with K-C- in good faith. In his March 20, 2012, affidavit, the petitioner described meeting K-C- in his neighborhood, dating her, and deciding to get married. He also discussed their wedding ceremony and honeymoon in Nags Head, North Carolina, the birth of their daughter, and being a stepfather to K-C-’s son from a prior relationship. In addition, the petitioner submitted an affidavit from his mother-in-law, dated March 19, 2012, in which she recounted meeting the petitioner at a family gathering in [REDACTED], and seeing him regularly at her home while the petitioner and K-C- were dating. She indicated that she helped plan, and attended, the couple’s wedding. She stated that K-C- and the petitioner initially resided together at her home for three months, and that she and her husband assisted the petitioner and K-C- in purchasing a home before the birth of their child in [REDACTED]. The petitioner also provided the first page of a lease, dated in May of [REDACTED] that included the names of both the petitioner and K-C-.

In response to the RFE, the petitioner submitted two affidavits from friends who attested to visiting the petitioner and K-C- at their home and attending social events with them between [REDACTED]. He also submitted his daughter’s birth certificate, confirming that the petitioner and K-C- have a daughter together, and a printout of case details of an unlawful detainer filed jointly against the petitioner and

K-C- in [REDACTED] In addition, the petitioner submitted photographs of the couple at their wedding ceremony and on numerous other occasions.

In his decision, the director incorrectly discounted much of the relevant evidence, described above, and denied the petition. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). However, the petitioner is nonetheless required to demonstrate his eligibility for the benefit sought. In lieu of traditional joint documentation, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). USCIS has sole discretion to determine credibility of evidence and weight accorded. *See* Section 204(a)(1)(J) of the Act. *De novo* review of the relevant evidence reveals that the petitioner has met his burden to demonstrate that he entered into his intended marriage with K-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. This portion of the director's decision is withdrawn. However, as he has not demonstrated the existence of a qualifying relationship, the appeal cannot be sustained.

*Conclusion*

The record reflects that the petitioner entered into his intended marriage with K-C- in good faith; however, as his marriage to K-C- was not legally valid, he cannot demonstrate a qualifying spousal relationship and is therefore ineligible for immediate relative classification based on this relationship. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.