



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

**MAY 14 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.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (the director) denied the immigrant visa petition and dismissed a subsequent motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his U.S. citizen spouse.

The director denied the petition on the basis of her determination that the petitioner failed to establish that he had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification based upon that relationship. The director also determined that the petitioner did not establish that he was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner submits a brief.

*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 are further explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) Battery or extreme cruelty. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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. . . .

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Afghanistan, entered the United States on September 17, 1996, as a B-2 nonimmigrant visitor. He married H-M-<sup>1</sup>, a United States citizen, on [REDACTED] 2004, in [REDACTED], Arizona. This marriage was later declared void pursuant to Arizona state law on [REDACTED], 2011. The petitioner filed the instant Form I-360 self-petition on September 30, 2011. The director subsequently issued a request for additional evidence (RFE) of the petitioner's marriage or termination of his marriage to H-M- and the requisite battery or extreme cruelty by H-M- against him. The petitioner submitted additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and dismissed the petitioner's motion to reconsider. The petitioner timely appealed.

We conduct appellate review on a *de novo* basis. Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed and the petition will remain denied for the following reasons.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

The director correctly determined that the record below failed to demonstrate that the petitioner had a qualifying relationship with a United States citizen and was eligible for immediate relative

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

classification. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse. The relevant evidence in the record includes the petitioner's marriage certificate showing that he married H-M- on [REDACTED], 2004, in Arizona and a subsequent court order from the Superior Court of Arizona, [REDACTED] County declaring his marriage to H-M- as void pursuant to section 25-101 of the Arizona Revised Statutes (A.R.S.).

Section 25-101 of the A.R.S. regarding void and prohibited marriages states: "Marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews and between first cousins, is prohibited and void." See ARIZ.REV.STAT. § 25-101 (West 2004).<sup>2</sup> The statute further states that marriage between first cousins may be allowed if both are sixty-five years of age or older or, in cases where one or both first cousins are under sixty-five years of age, "upon approval of any superior court judge in the state if proof has been presented to the judge that one of the cousins is unable to reproduce." *Id.* Here, the record shows that the petitioner and H-M- are first cousins who married and resided in Arizona, and who subsequently had two children together. The record does not show that the petitioner and H-M- met any of the qualifying factors allowing first cousins to marry under Arizona law.

On appeal, the petitioner cites to *Matter of Astorga*, 17 I&N Dec. 1 (BIA 1979), asserting that the relation back doctrine should not apply to his annulment because he did not commit marriage fraud and to apply the relation back doctrine would result in injustice. While it has been held that the relation-back doctrine does not have to be applied in every case where a marriage has been annulled,<sup>3</sup> here, the petitioner's marriage to H-M- was declared void and annulled pursuant to a state law prohibiting first cousins from marrying each other. Under Arizona law, an annulment can take place only if the marriage is void or voidable. See ARIZ.REV.STAT. § 25-301 (West 2004); see also *Medlin v. Medlin*, 194 Ariz. 306 (Ariz.Ct.App. June 17, 1999). A marriage that is considered voidable is subjected to "ratification or disaffirmance by the injured party" while void marriages are "incapable of ratification." See *Hodges v. Hodges*, 118 Ariz. 572 (Ariz.Ct.App. Feb. 15, 1978)(quoting *Southern Pacific Company v. Industrial Commission*, 54 Ariz. 1, 91 P.2d 700 (1939), which was overruled on other grounds by *Means v. Industrial Commission*, 110 Ariz. 72, 515 P.2d 29 (1973)). There are no provisions under Arizona law that allow for a marriage between prohibited family members to be ratified and made valid. Consequently, the petitioner's marriage to H-M- was void from its inception and this defect cannot be remedied.

The petitioner also asserts that state specific provisions regarding the ability of cousins to marry should not preclude him from obtaining protection under federal law. However, as observed by the Board of

<sup>2</sup> In its decision, *Majors v. Horne*, 14 F.Supp.3D 1313 (D.Ariz. 2014), the United States District Court held that A.R.S. § 101-25 is unconstitutional on other grounds.

<sup>3</sup> The "relation-back doctrine" which treats the marriage as if it had never existed, does not have to be applied in every case where a marriage has been annulled. See *Garcia v. INS*, 31 F. 3d 441, 441 (7th Cir. 1994); *Matter of Magana*, 17 I&N Dec. 111, 111 (BIA 1979); *Delmas v. Gonzalez*, 422 F. Supp 2d 1299 (S.D. Fla. 2005).

Immigration Appeals (BIA) in *Matter of Arenas*, “[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 (BIA 1975). 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.

### *Battery or Extreme Cruelty*

We find no error in the director’s determination that the petitioner did not establish that H-M- subjected him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner’s affidavit, affidavits from married couple [REDACTED] and [REDACTED] and a psychological evaluation report from [REDACTED], Psy.D.

In his affidavit, the petitioner stated that the first three years of his marriage to H-M- were happy and peaceful. He stated that H-M- then became controlling, called him names, and was unfaithful. He further stated that H-M- restricted his access to their children and threatened to have him deported. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about H-M-’s treatment of him. The petitioner’s statements do not demonstrate that H-M- ever battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). In their affidavits, [REDACTED] and [REDACTED] described fights that they observed between H-M- and the petitioner. [REDACTED] who is also H-M-’s sister, further stated that she no longer has any contact with her family due to their beliefs and lifestyle differences. While [REDACTED] and [REDACTED] provided detailed accounts of the petitioner’s interactions with H-M-, their accounts also do not demonstrate that H-M-’s behavior amounted to extreme cruelty as defined in the regulations.

Likewise, the psychological evaluation from Dr. [REDACTED] did not provide any additional information regarding the claimed abuse. Dr. [REDACTED] indicated that on the day of the evaluation, the petitioner “presented with a range of anxiety and depression symptoms consistent with someone who has been traumatized by spousal abuse.” However, the evaluation does not provide any probative details regarding any battery or extreme cruelty inflicted by H-M- upon the petitioner. While we do not question Dr. [REDACTED]’s professional expertise, her assessment conveys the petitioner’s statements during her interview with him and as reflected in his affidavit, and does not provide further, substantive information regarding the claimed abuse.

On appeal, the petitioner does not provide additional evidence regarding H-M-’s treatment of him. The affidavits and psychological evaluation submitted below do not contain sufficient, probative information to establish the claimed abuse. Accordingly, the petitioner has not established that H-M- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that 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.