



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-H-

DATE: OCT. 5, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL
IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, revoked the approval of the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

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:

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].

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

The eligibility requirements for abused spouses are explained 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:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) ... of the Act based on that relationship [to the U.S. spouse].

....

(v) *Residence.* ... The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser ... in the past.

....

(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 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:

(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 or proof of immigration status of the lawful permanent resident abuser. 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

(b)(6)

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together. . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

....

(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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner entered the United States as an F-1 nonimmigrant student on January 11, 2001. The Petitioner indicates that he married E-M-¹ in [REDACTED], Zimbabwe, on [REDACTED] 2000. They were divorced in [REDACTED], Texas, on [REDACTED] 2011. Prior to their divorce, the Petitioner married Y-M-², a U.S. citizen, on [REDACTED] 2010, and they were divorced on [REDACTED] 2012. The Petitioner filed the instant petition on June 11, 2012. The Director approved the petition on October 22, 2013, and subsequently revoked the approval on January 29, 2015. The Director determined that the Petitioner did not establish that his marriage to Y-M- was valid under Texas law because the Petitioner did not demonstrate that he resided with Y-M- and that they jointly presented themselves as married upon the termination of his first marriage to E-M-. The Petitioner filed a timely appeal.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the Petitioner's eligibility, and we will dismiss the appeal for the following reasons.

III. QUALIFYING RELATIONSHIP AND ELIGIBILITY FOR IMMIGRANT CLASSIFICATION

In his brief submitted in support of the appeal, the Petitioner cites to Texas Family Code (Tex. Fam. Code (the Code)) §§ 1.101, 1.102, 2.301 and asserts that his marriage to Y-M- is valid under Texas law because "the validity of every marriage is presumed" and "the validity of a marriage is not affected by any error or illegality in obtaining the marriage license." He also asserts that the Texas courts have determined "the elements of agreement, cohabitation, and holding out apply to common-law [sic] and *only* common-law [sic] marriage [citations omitted]."

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

(b)(6)

As indicated above, the record reflects that the Petitioner and E-M- were divorced on [REDACTED], 2011, after he had entered into his [REDACTED] 2010 marriage to Y-M-. Although he remained married to E-M- when he entered into his marriage with Y-M-, this fact is not necessarily disqualifying. We must look to “the law of the place of celebration of the marriage” to determine the validity of their marriage for immigration purposes. *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). In *Arenas*, the beneficiary, a citizen of Mexico, married the U.S. citizen petitioner during a ceremonial marriage in Texas in March 1972. *Id.* At the time of their marriage, the beneficiary’s first marriage was neither dissolved nor otherwise terminated. *Id.* She subsequently obtained a divorce in Mexico from her first husband on May 29, 1974. *Id.* The Board of Immigration Appeals sustained the petitioner’s appeal, concluding, “[U]nder Texas law, his marriage to the beneficiary would be recognized as valid if, as alleged, the beneficiary has obtained a valid divorce and if she and the petitioner have resided together as husband and wife.” *Id.* at 175.

The Petitioner’s circumstances in this case are similar to those as the beneficiary’s in *Arenas*. As the Petitioner was married to Y-M- in Texas, we will analyze the relevant provisions of the Code to determine the validity of his marriage to Y-M- for immigration purposes. Although the Petitioner correctly observes that section 1.101 of the Code provides for the presumption of the validity of a marriage performed in Texas, the Petitioner does not further acknowledge the remaining provisions of this section of the Code for rebutting that presumption. Section 1.101 of the Code states, in full:

In order to promote the public health and welfare and to provide the necessary records, this code specifies detailed rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith ... it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless a strong reason exists for holding the marriage void or voidable. Therefore, every marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.

Further, although the Petitioner correctly observes that section 2.301 of the Code provides that the validity of a marriage is not affected by any error or illegality in obtaining a marriage license, the Director’s decision to revoke the approval of the instant petition was not based on an allegation of impropriety on the part of the Petitioner in obtaining a marriage license with Y-M-. Rather, the Director’s determination is based on the actual validity of the Petitioner’s marriage to Y-M- under the laws of Texas.

In addition, contrary to the Petitioner’s assertion that the “elements of agreement, cohabitation, and holding out apply to common-law and *only* common-law marriage,” section 6.202 of the Code provides:

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.

(b)(6)

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

As the Petitioner's marriage to E-M- had not been dissolved at the time that he entered into marriage with Y-M-, the marriage to Y-M- was considered void by the state of Texas. For their marriage to be deemed valid, the Petitioner must demonstrate that he lived together with Y-M- "as husband and wife" and that "they represented themselves to others as being married" after his divorce from E-M-.

On his Form I-360, the Petitioner indicated that he and Y-M- resided together from [REDACTED] 2010 until [REDACTED] 2012 and that they last resided together on [REDACTED] Texas. The Petitioner, however, did not further describe their marital residence in any of his statements, such as providing a discussion of their shared belongings and routines, and whether they moved to this address together after marriage or whether one of them had already resided there.

Regarding his representations of being married to Y-M-, in his declarations, the Petitioner relayed that he met Y-M- at a church, and they went to a Chinese restaurant in April 2010. The Petitioner generally indicated that they had "wonderful time[s] together" and visited friends for barbecues. He did not further describe their initial meeting and time spent together during their courtship. He then indicated that he proposed to Y-M- on [REDACTED], 2010, and they were married at the courthouse in [REDACTED] Texas, but provided no further probative details regarding their life after marriage, other than as it relates to the abuse.

Similarly, in an undated declaration, the Petitioner's friend, [REDACTED], stated that the Petitioner and Y-M- were married in [REDACTED] 2010, "an event others and [REDACTED] were glad to see." He also generally indicated that the Petitioner and Y-M- hosted a few cookouts and barbecues but did not provide any further details of the Petitioner and Y-M-'s relationship, marital residence, and times spent together, other than as it relates to the abuse.

The Petitioner's statements and the statement submitted on his behalf contain no specific and probative information regarding his residence with Y-M- after April 28, 2011, and their relationship as husband and wife.

In addition, the record contains inconsistent information concerning the timeframe that the Petitioner claims he and Y-M- lived together. As indicated above, the Petitioner initially indicated on the Form I-360 that he and Y-M- last resided together in April 2012. However, in his May 2012 declaration, he stated that Y-M- "packed her bags and left" on February 22, 2012. Further, the Original Petition for Divorce, filed by the Petitioner on May 23, 2012, in relation to his marriage to Y-M-, stated, "The parties ceased to live together as husband and wife on or about May 3, 2011." Moreover, although the Petitioner listed the claimed marital address on his Form G-325A, Biographic Information, dated May 19, 2011, on a second Form G-325A dated December 2, 2013, he indicated his residence at an address on [REDACTED] Texas since [REDACTED] 2010; an address different from the one he claimed as his marital residence with Y-M- on his Form I-360. The Petitioner does not acknowledge or provide any explanation for the discrepancies.

(b)(6)

Although the Petitioner also submitted joint bank account and billing statements; correspondence addressed to Y-M- at the [REDACTED] address; and undated photographs with no descriptions, even without consideration of the discrepancies in the record regarding his claimed shared residence, he has not provided sufficient probative and detailed information about their shared residence and shared experiences, apart from the abuse.

The Petitioner, therefore, has not established that he and Y-M- lived together as spouses and represented themselves to others as being married after his divorce from E-M-. Therefore, his void marriage to Y-M- did not become valid pursuant to section 6.202(b) of the Code. Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner has a qualifying relationship as the spouse of a U.S. citizen, and he has not demonstrated his corresponding eligibility for immigrant classification based on such a relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

IV. GOOD-FAITH ENTRY INTO MARRIAGE AND JOINT RESIDENCE

Beyond the decision of the Director, we further find the record insufficient to establish that the Petitioner resided with Y-M- and that he entered into marriage with her in good faith. As discussed above, the statements provided by the Petitioner and his friend do not provide sufficient probative and detailed information about the Petitioner's residence with Y-M-; their courtship, engagement, and wedding; their life together after their marriage; and the Petitioner's intentions in marrying Y-M-. In addition, the Petitioner has provided inconsistent claims and evidence regarding his residence with Y-M-. Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner entered into marriage with Y-M- in good faith and resided with her as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(A)(iii)(II)(dd) of the Act.

V. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his 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 burden has not been met. The appeal will be dismissed and the petition will remain revoked.

ORDER: The appeal is dismissed.

Cite as *Matter of K-H-*, ID#13393 (AAO Oct. 5, 2015)