



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

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

MATTER OF K-H-

DATE: APR. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, revoked the approval of the petition. The Director concluded that the Petitioner did not establish that his marriage to his abusive spouse, Y-M-,¹ was valid under Texas law. We dismissed the appeal, concurring with the Director's conclusions, and also determined upon our *de novo* review of the record of proceedings that the Petitioner did not establish by a preponderance of the evidence that the Petitioner entered into his marriage with Y-M- in good faith and resided with Y-M- during their marriage as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(A)(iii)(II)(dd) of the Act.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. The Petitioner claims that we erred in our interpretation of law and public policy and we lack jurisdiction to determine the legal validity of his marriage to Y-M-.

Upon review, we will deny the motion.

I. APPLICABLE LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

¹ Name withheld to protect identity.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner married his first wife, E-M-² on [REDACTED] 2000, and they were divorced on [REDACTED] 2011. The Petitioner married Y-M-, a U.S. citizen, on [REDACTED] 2010, in Texas, and they were divorced on [REDACTED] 2012. The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 11, 2012. The Director revoked approval of the Form I-360 based on a finding 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 they jointly presented themselves as married upon the termination of his first marriage to E-M-. In our decision on appeal, we also concluded that the Petitioner did not establish that his marriage to Y-M- was valid under Texas law and, as noted above, we also determined that the preponderance of the relevant evidence did not demonstrate that the Petitioner entered into his 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. Our previous decision is incorporated herein by reference.

III. ANALYSIS

A. Qualifying Relationship and Eligibility for Immigrant Classification

In his brief on motion, the Petitioner first argues that we improperly “intermingled” the elements of an informal marriage with the elements of a subsequently valid marriage under Texas law. According to the Petitioner, pursuant to section 2.401(a)(2) of the Texas Family Code, the validity of an informal marriage, such as a common law marriage, may be established through evidence that the spouses agree to be married and, after such an agreement, they live together and represent to others that they are married. In contrast, the Petitioner claims that, under section 6.202 of the Texas Family Code, a second marriage, such as the Petitioner’s marriage to Y-M-, entered into prior to the dissolution of a preceding marriage, becomes valid upon dissolution of the preceding marriage, if the persons live together and represent to others that they are married.

Contrary to the Petitioner’s assertion, in our decision on appeal, we did not confuse the provisions of Texas law regarding informal marriages and subsequently valid marriages. We applied section 6.202 and held that, in order for the Petitioner’s marriage to Y-M- to be deemed valid, the Petitioner must establish that he lived together with Y-M- “as husband and wife” and “they represented themselves to others as being married” after his divorce from E-M-. The critical inquiry, therefore, is whether the Petitioner resided with Y-M- and represented to others that they were married after [REDACTED] 2011, the date of his divorce from E-M-.

In that regard, we concluded that the evidence provided by the Petitioner in the record of proceedings was inconsistent regarding when he and Y-M- ceased living together and whether they represented to others that they were married after [REDACTED] 2011. Specifically, with respect to when they ceased living together, we noted that the Petitioner indicated on the Form I-360 that they last

² Name withheld to protect the individual’s identity.

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resided together in April 2012, yet, in his May 2012 declaration, he stated that Y-M- left their home on February 22, 2012, and, in the Original Petition for Divorce, the Petitioner stated that they ceased living together on or about May 3, 2011. We also noted that the Petitioner listed his claimed marital address with Y-M- on a Form G-325A, Biographic Information, dated May 19, 2011, while he indicated on another Form G-325A, dated December 2, 2013, that he lived at an address different from the claimed marital address since September 2010.

In terms of whether the Petitioner and Y-M- represented to others, after [REDACTED] 2011, that they were married, we noted in our decision on appeal that the Petitioner's declarations and the declaration of his friend, [REDACTED] did not describe his relationship with Y-M- during the relevant period. We also found that the joint bank account and billing statements, correspondence addressed to Y-M- at the claimed marital address, and undated photographs without descriptions did not provide sufficient probative and detailed information regarding whether they shared a marital residence or represented to others they were married.

On motion, the Petitioner does not acknowledge or provide any explanation for the discrepancies we cited in our decision on appeal regarding when he and Y-M- ceased living together or whether the Petitioner and Y-M- represented to others, after [REDACTED] 2011, that they were married. Rather, the Petitioner claims on motion that the Texas court that dissolved the Petitioner's marriage to Y-M- found that his marriage to Y-M- was valid and we should respect that court's determination. As noted above, in the Original Petition for Divorce, the Petitioner claimed that he and Y-M- ceased living together on or about May 3, 2011. The Decree of Divorce ordered that the Petitioner and Y-M- "are divorced and that the marriage between them is dissolved."

Neither the Original Petition for Divorce nor the Decree of Divorce refer to the Petitioner's prior marriage to E-M- and the Decree of Divorce does not indicate that the order granting the divorce was issued in order to establish the validity of the Petitioner's marriage to Y-M-. While the Petitioner is correct that the Texas court issuing the Decree of Divorce indicated that he and Y-M- were married, the Decree of Divorce does not provide sufficient relevant or probative evidence that the Petitioner and Y-M- represented to others, after his divorce from E-M-, that they were married, or that the court know of the Petitioner's marriage to E-M- and that the marriage had not yet been terminated when he married Y-M-. Similarly, the Original Petition for Divorce reflects that he and Y-M- ceased living together on or about May 3, 2011, which was less than one week following his divorce from E-M-, and does not address whether the Petitioner and Y-M- represented to others that they were married, as required by section 6.202(b) of the Texas Family Code.

The Petitioner also contends on motion that a marriage entered into prior to the dissolution of a preceding marriage must be declared void by a court and, without such a judicial declaration, the more recent marriage is presumed valid under section 1.101 of the Texas Family Code. The Petitioner claims that we lack jurisdiction to determine whether his marriage to Y-M- is void or valid because we are not a Texas court.

First, as we concluded in our decision on appeal, section 6.202(a) of the Texas Family Code describes when a marriage is void, as was the Petitioner's marriage to Y-M-, and states that a "later

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marriage that is void . . . 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.” Tex. Fam. Code § 6.202(b). Section 6.202 provides guidance with respect to marriages in which the date of divorce of a previous marriage does not precede the date of marriage of a later marriage, but it does not require that a court declare that a marriage is void or valid.

Second, contrary to the Petitioner’s assertion on motion, section 1.102 of the Texas Family Code does not require that a court must declare a marriage void: “When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid . . . until one who asserts the validity of a prior marriage proves the validity of the prior marriage.” Tex. Fam. Code § 1.102. Section 1.102 does not require a court to declare his marriage to Y-M- void, and the Petitioner does not contest that his marriage to E-M- was valid.

In contrast, section 1.101 provides, in part, that “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”³ Accordingly, a marriage is made void by operation of law, and not a determination by a court. The relevant issue, therefore, is whether, because the Petitioner’s marriage to Y-M- is void under section 6.202(a) of the Texas Family Code, the Petitioner can satisfy the requirements of section 6.202(b) to establish the validity of his marriage to Y-M- by demonstrating that, after ██████████ 2011, he and Y-M- lived together as husband and wife and represented themselves to others as being married. As we stated earlier in this decision and in our decision on appeal, the Petitioner has not made such a demonstration.

Section 204(a)(1)(A)(iii)(II) of the Act and the corresponding regulation at 8 C.F.R. § 204.2(c)(1)(i) require the Petitioner to establish that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act based on his relationship to Y-M-. In order for us to determine whether the Petitioner’s marriage to Y-M- is valid, we look to “the law of the place of celebration of the marriage.” *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). As noted above, the Petitioner’s marriage to Y-M- is made void by operation of Texas law unless he can demonstrate that his marriage is nonetheless valid under the factors described at section 6.202(b) of the Texas Family Code. We need not act as a court to determine the validity the Petitioner’s marriage to Y-M- is valid for immigration purposes. *See* section 204(a)(1)(A)(iii) of the Act.

On motion, the Petitioner still does not establish the validity of his marriage to Y-M- because he does not clarify the discrepancies that we previously noted in the record of proceedings regarding his residence with Y-M- during their marriage and after his divorce from E-M-, and does not present any evidence that he and Y-M- represented themselves to others as a married couple. The Petitioner is consequently unable to establish that he has a qualifying relationship with a U.S. citizen spouse and is eligible for immediate relative classification based on that relationship as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

³ Chapter 6 of the Texas Family Code is titled “Suit for Dissolution of Marriage.”

B. Entry Into Marriage in Good Faith and Joint Residence

In our decision on appeal, we also found the evidence in the record of proceedings insufficient to establish that the Petitioner resided with Y-M- and that he entered into marriage with her in good faith, as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(A)(iii)(II)(dd) of the Act. The Petitioner does not address these findings in his brief on motion and, accordingly, we will not disturb them.

IV. CONCLUSION

The Director had good and sufficient cause to revoke approval of the Form I-360. Section 205 of the Act, 8 U.S.C. § 1155. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The motion to reconsider is denied.

Cite as *Matter of K-H-*, ID# 16513 (AAO Apr. 8, 2016)