



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

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

MATTER OF M-A-

DATE: FEB. 23, 2016

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.

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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] . . . .

The evidentiary standard and guidelines for a 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 . . . 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 . . . .

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Nigeria, was admitted to the United States on November 4, 2008, as a B-2 nonimmigrant visitor, with permission to remain until May 3, 2009.<sup>1</sup> On [REDACTED] the

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<sup>1</sup> On her Form DS-156, Nonimmigrant Visa Application, dated September 9, 2008, the Petitioner attested that she was seeking permission to come to the United States because of her daughter's medical evaluation. However, on the sections

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Petitioner married D-A-<sup>2</sup>, a U.S. citizen, and based upon that relationship filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 20, 2012. The Director approved the Form I-360 on September 27, 2013, and after providing notice to the Petitioner, subsequently revoked the approval on June 24, 2015. Specifically, the Director determined that the Petitioner had been married prior to her marriage to D-A- and that she did not establish that the prior marriage was properly terminated. The Petitioner filed a timely appeal.

### III. ANALYSIS

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.

#### A. Qualifying Relationship

In her personal statement submitted in support of the Form I-130, Petition for Alien Relative, filed on her behalf, the Petitioner stated she and her first spouse, J-A-, were married in 1980:

[U]nder the native laws, traditions and customs of the [REDACTED] . . . ethnic group of [REDACTED] Nigeria . . . That [on] [REDACTED] 2003, [they] had absolute dissolution of the marriage under the native laws, traditions and customs of the [REDACTED] . . . ethnic group . . . which was not then registered with the Customary Court of [REDACTED] Nigeria.

Upon filing her Form I-360, the Petitioner did not submit any evidence of the dissolution of her marriage to J-A-. In her August 2013 response to the Director's request for evidence, the Petitioner submitted copies of a Certificate of Divorce and the related transcript from the divorce proceedings in the Sharia Court [REDACTED]. The Sharia Court documents indicate that the Petitioner's customary marriage to J-A-, "[h]as been dissolved in accordance with [REDACTED] customary Law [w]ith effect from [REDACTED] 2003." The Petitioner also submitted a copy of a declaration from J-A- dated January 11, 2013, in which he clarified they were married on [REDACTED] 1980, and stated their marriage was dissolved on [REDACTED] 2003, both events having occurred "under the [REDACTED] Native Law and Custom."

In her notice of intent to revoke (NOIR), the Director identified the Certificate of Divorce as "suspect" because although it was purported to be an official document:

- It was printed on commercially available paper without any security features.
- It was on a computer-generated form with computer-generated text stating the divorce was, "issued by a civil court under civil procedure." However, the form also

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of Form DS-156 that requested information about her spouse's name and date of birth as well as her marital status, including whether she was divorced or separated, the Petitioner did not provide any information.

<sup>2</sup> Names withheld to protect the individuals' identities.

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contained handwritten information stating, “the divorce was terminated according to [REDACTED] customary law[,]” and an official stamp indicating a Sharia Court issued the document.

- The printing and graphics on the document were of poor quality and illegible, including the official State seal and country motto.

In addition to the Director’s concerns with the document itself, in the NOIR, the Director also indicated the record was “unclear” because the divorce proceedings reportedly occurred in the Sharia Court [REDACTED], yet the documents also indicated that the “marriage was dissolved under customary law.” The Director referenced the U.S. Department of State’s Reciprocity Schedule (the DOSRS), which states, the following about customary divorce in Nigeria:

Marriage under native law and custom may be dissolved by a Magistrate Court or a Customary Court. It may also be dissolved in accordance with the Native Law and Custom of the place where the marriage was contracted without recourse to any Court, be it Customary or Magistrate Court. The proper documentation for customary divorce is a Court Judgment or Order granting the divorce or where recourse was not had to the Court, an affidavit deposing to the fact of the divorce.

U.S. Department of State, Bureau of Consular Affairs, <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/NI.html> (last visited February 9, 2016, and added to the record of proceedings).

The Director also noted the document entitled, “Enrol[ment] of Judgment,” that the Petitioner submitted as evidence of the purported dissolution of her marriage to J-A- in support of her Form I-130. In the NOIR, the Director sought further clarification regarding why, if the Petitioner’s and J-A-’s families met and decided in [REDACTED] 2003 to terminate their marriage according to customary law, the termination of their marriage was not recorded in the “Enrol[ment] of Judgment” until 2011, about eight years after the purported dissolution.

In her January 2015 response to the NOIR, the Petitioner resubmitted the copies of the Certificate of Divorce and related transcript, along with J-A-’s January 2013 declaration, but did not address the concerns raised in the NOIR. The Petitioner also submitted a copy of an affidavit dated December 23, 2014, from her cousin, who generally stated the Petitioner “was formerly married to [J-A-,] but the said marriage has been dissolved.” The Petitioner further submitted a copy of an attestation dated December 31, 2014, from the Registrar of Marriages with the Ministry of Interior in [REDACTED] Nigeria, who, based upon the Certificate of Divorce and the cousin’s affidavit, generally stated the Petitioner “is a divorc[é]e” and “free to re[m]arry.” However, neither the Petitioner’s cousin nor the Registrar provided any further information regarding the Sharia court’s authority, and did not specify dates or other information concerning the Petitioner’s and J-A-’s marriage and its dissolution.

On appeal, the Petitioner submits a brief but no additional evidence. The Petitioner asserts that the Director’s decision to revoke the approval of the instant Form I-360 is not supported by a forensic opinion or the Library of Congress. However, it is the Petitioner, and not the Director, who bears the

burden of establishing eligibility under section 204(a)(1)(A)(iii) of the Act. *See* section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The Petitioner also generally reasserts that the Director erred in finding that her prior marriage to J-A- was not “properly terminated.” Although the Petitioner references her prior submission of documents purportedly dissolving her marriage under customary law, she does not address the issues raised regarding the authority of the Sharia court and its purported dissolution of her customary marriage. Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). When the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). The Petitioner also does not address the irregularities with the actual document, as identified by the Director. Regarding the “Enrol[l]ment of Judgment,” it is not clear why the Petitioner would have needed further proceedings in 2011 if the Certificate of Divorce was properly issued in 2003 and why the judgment would not be entered for nearly eight years.

Even if we accepted the validity of the “Enrol[l]ment of Judgment” and determined that the Petitioner and J-A- were divorced as of 2011, in accordance with the laws of Ohio, the Petitioner’s marriage to D-A- would be considered bigamous, and thereby, void. At the time of the Petitioner’s 2009 marriage to D-A-, the Ohio Revised Code stated, in relevant part:

- (A) No married person shall marry another or continue to cohabit with such other person in this state.
- (B) It is an affirmative defense to a charge under this section that the actor’s spouse was continuously absent for five years immediately preceding the purported subsequent marriage, and was not known by the actor to be alive within that time . . . .

OHIO REV. CODE ANN. § 2919.01 (West 2009).

Void marriages are those prohibited by law in Ohio and are not legal. *Darling v. Darling*, 335 N.E. 2d 708, 710 (8th Dist. 1975) (stating, “A bigamous marriage is *void ab initio* [italics added] and of no legal purpose. One who is already married has no capacity to enter into another marriage contract, either ceremonial or common law . . . . a void marriage is invalid from its inception, . . .”). In Ohio, where there is the solemnization of two marriages, there is a rebuttable presumption of the validity of the first marriage. *Carnes v. Carnes*, 38 N.E.3d 1214, 1218 (1st Dist. 2015). The burden is on the party asserting the validity of the second marriage, and if the presumption is not overcome, the second marriage is considered to be bigamous and void. *Id.* As the “Enrol[l]ment of Judgment” did not dissolve the Petitioner’s marriage to J-A- until well after her marriage to D-A-, the presumption of validity which attached to her marriage to J-A- is not overcome. Therefore, the conduct of the spouses, such as continued cohabitation, would not ratify her marriage to D-A- or make it valid and their marriage would be considered bigamous under Ohio law and void from its inception.

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As the Petitioner has not submitted sufficient evidence of the termination of her customary marriage to J-A- prior to her marriage to D-A-, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner has a qualifying relationship as the spouse of a U.S. citizen as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

#### B. Corresponding Eligibility for Immigrant Classification

As the record does not contain sufficient evidence to establish that the Petitioner has a qualifying relationship as the spouse of a U.S. citizen, she also has not demonstrated her corresponding eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons.<sup>3</sup> 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. 127-28 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-A-*, ID# 15664 (AAO Feb. 23, 2016)

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<sup>3</sup> Because we have affirmed the Director's decision on the two grounds of ineligibility discussed above, it is unnecessary to discuss any additional grounds of ineligibility. However, this determination does not mean that we find that the Petitioner has sufficiently established her good-faith marriage and joint residency with her U.S. citizen spouse, and we reserve our *de novo* review for any future consideration of the Petitioner's eligibility for immigrant classification as an abused spouse.