



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

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

MATTER OF O-R-O-

DATE: JAN. 8, 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, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition, finding that the Petitioner had not established a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based on such a relationship.

**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.

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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

*Matter of O-R-O-*

(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. citizen spouse].

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 or proof of the 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 both the self-petitioner and the abuser.[]

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The record indicates that the Petitioner, a native of Germany and citizen of Russia, initially entered the United States as a B2 nonimmigrant visitor on June 27, 2011. She then married M-B-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2011, in Pennsylvania. The Petitioner thereafter departed the United States for Russia on August 24, 2011. The record shows that she returned to the United States on several other occasions since then. The Petitioner was last paroled into the United States on May 27, 2013, to pursue her pending application for adjustment of status based on a Form I-130, Petition for Alien Relative, filed by M-B- on her behalf. The Form I-130 was denied on April 17, 2014.

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on May 19, 2014, based on her relationship with M-B-. The Director subsequently issued a request for evidence (RFE) establishing the termination of the Petitioner's prior marriages and the requisite battery or extreme cruelty during her marriage to M-B-. The Petitioner timely responded to the RFE; however, the Director issued a notice of intent to deny (NOID), notifying the Petitioner that she had not demonstrated a qualifying marital relationship with M-B-, because the record did not contain evidence of the termination of all her prior marriages. The Petitioner responded to the NOID with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

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

*Matter of O-R-O-*

The Director denied the petition and the Petitioner timely appealed. On appeal, the Petitioner submits a brief and additional evidence.

### III. ANALYSIS

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 ground for denial. The appeal will be dismissed for the following reasons.

#### A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director correctly determined that the Petitioner did not establish a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification.

The record discloses that at the time the Petitioner filed her U.S. nonimmigrant visa application on February 4, 2011, she specified that she would be travelling to the United States with her spouse, [REDACTED]. She provided [REDACTED] full name and date of birth and indicated that they shared the same mailing address. In addition, [REDACTED] filed the same application on the same day, asserting that the Petitioner was his spouse and shared his home address. Both listed the same telephone numbers on their respective application forms as well. The record also shows that the Petitioner and [REDACTED] travelled to and from the United States together on multiple occasions since their initial entry on June 27, 2011. In contrast, in proceedings before the United States Citizenship and Immigration Services (USCIS), the Petitioner has maintained that she was never married to [REDACTED]. The Director properly deemed these assertions inconsistent with her prior statement on her nonimmigrant visa application that she executed and in which she declared herself as married to [REDACTED]. The Director therefore issued a NOID requesting evidence of the termination of the Petitioner's marriage to [REDACTED]. In response, the Petitioner reasserted that she never married [REDACTED] and that she signed the nonimmigrant application prepared by an agency without having the document translated to her from English. The Petitioner also submitted a statement from [REDACTED] dated December 5, 2013, asserting that he was not legally married "at the moment." He did not address, however, whether he had previously been married to the Petitioner, and if so, whether that marriage was terminated before the Petitioner married her U.S. citizen spouse, M-B-, on [REDACTED] 2011. His letter also does not offer any explanation as to why he indicated on his U.S. nonimmigrant application that he was married to the Petitioner, if in fact, that was not the case. The Petitioner also proffered a photocopy of documentation from the Central Government Marriage Registry of the Russian Federation, declaring that there was no record of marriage for an individual by the name of "[REDACTED]" and [REDACTED] date of birth for the period from January 1990 and January 2015. In the first instance, the spelling of the name searched does not conform to the spelling of [REDACTED] name.<sup>2</sup> More importantly, no corresponding search was done for the Petitioner's

<sup>2</sup> [REDACTED] name, as listed in the original Russian marriage registry record, is spelled differently from his

*Matter of O-R-O-*

marital history. Although the Petitioner indicated that such a search could not be conducted without her appearing in person at the Marriage Registry in Russia, she provided no, and we are unaware of any, legal authority or evidence demonstrating this requirement. While we recognize the difficulties the Petitioner faces in obtaining overseas documentation, 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, the record includes inconsistent statements from the Petitioner herself about her marital status at the time of the filing of her U.S. nonimmigrant visa application, which she has not overcome. The Director, therefore, properly determined that the Petitioner had not demonstrated that her marriage to M-B- was legally valid, and consequently, that she did not establish the requisite qualifying spousal relationship with a U.S. citizen based on that marriage.

On appeal, the Petitioner contends that there are no inconsistencies in the record regarding her marital history based on her written affidavits in these proceedings. However, as noted, the record indicates that the Petitioner had previously claimed a prior marriage to [REDACTED] in pursuing a U.S. nonimmigrant visa, which she has now disavowed. The Petitioner asserts again that she paid someone to fill out her nonimmigrant visa application and that she had no knowledge of what was included on the application. However, the Petitioner has acknowledged that she signed the application, in which she indicated that she had no assistance in the preparation of the document. Further, the record contains no explanation as to why the Petitioner, a trained journalist who had various business enterprises in Russia prior to coming to the United States,<sup>3</sup> would sign and submit the document without having it translated to her first. The Petitioner also submits background articles on the use of internal passports in Russia to record marital status of the passport holder. She proffers a copy of her own internal Russian passport issued in 2006, in which the page setting for her marital status is left blank, as evidence that she had never married [REDACTED]. However, the Petitioner's passport is also notably blank on the page where her minor son's name and date of birth should have been recorded, thus undermining the reliability of the information recorded therein.

The Petitioner also asserts on appeal that the Director erred in failing to consider all the evidence, particularly the Russian Marriage Registry record she submitted and [REDACTED] statement asserting that "he has never been married to [the Petitioner]." Our review of the record does not support the Petitioner's assertions. As an initial matter, [REDACTED] statement indicates only that he was not married "at the moment," and does not address any prior marriages of his or whether he had ever been married to the Petitioner or anyone else. Additionally, the deficiencies in the referenced documentary evidence, as previously discussed, render them insufficient to overcome the Petitioner's inconsistent statements about her marital status in these proceedings and at the time she entered the United States.<sup>4</sup> She therefore has not shown that she was legally free to marry M-B-.

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name on his passport, a copy of which was proffered on appeal.

<sup>3</sup> See Psychological Evaluation by [REDACTED] Ph.D, dated March 19, 2014.

<sup>4</sup> The Petitioner mistakenly relies on *Matter of Lwin*, 16 I&N Dec. 1 (BIA 1976), where the Board of Immigration Appeals (Board) reversed the district director's determination that the beneficiary of a visa petition by his spouse had a prior undissolved marriage based on the fact that he had resided with the mother of his child in Burma. In contrast to this case, the beneficiary there never asserted or signed any documents indicating that he had been previously married to the mother of his child and the record contained evidence demonstrating that the couple had never legally married.

*Matter of O-R-O-*

Accordingly, the Petitioner has not established a qualifying spousal relationship based on her marriage to M-B-, and consequently, has also not demonstrated that she is eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on that relationship.

#### IV. CONCLUSION

On appeal, the Petitioner has not overcome the ground for denial of her petition because she has not established a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Accordingly, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 appeal is dismissed.

Cite as *Matter of O-R-O-*, ID# 14917 (AAO Jan. 8, 2016)