



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

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

MATTER OF M-J-C-

DATE: JUNE 13, 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) section 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, denied the petition. The Director concluded that the Petitioner did not demonstrate a qualifying relationship with her former spouse and her corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act because her marriage to her former spouse terminated more than two years before she filed the petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that her former spouse obtained a divorce from a court in New Jersey through fraud and, therefore, we should consider her married for the purpose of establishing her eligibility.

Upon *de novo* review, we will dismiss the appeal.

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.

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act.

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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 parts:

(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:

. . . .

(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]

II. ANALYSIS

The Petitioner is a citizen of Spain who married P-I-¹ a U.S. citizen, in 1999. The Petitioner and P-I- were divorced on [redacted] 2006, by the [redacted] New Jersey. The Petitioner appealed the divorce judgment to the Appellate Division of the [redacted] and that appeal was dismissed on [redacted]. See *[P-I-] v. [Petitioner]*, 918 A.2d 686 (N.J. App. Div. 2007). The Petitioner also filed a petition for certification to the [redacted] challenging the divorce judgment and that petition was denied on [redacted] 2007. The Petitioner also states that her and P-I-'s marriage was annulled on [redacted] 2007, by the [redacted] Spain.²

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), on August 6, 2015, based on her marriage to P-I-. The Director found that the Petitioner's marriage to P-I- terminated prior to filing her VAWA petition. On appeal, the Petitioner asserts that the Director's decision was issued in error because the divorce judgment issued by the [redacted] was obtained by P-I- through fraud.

¹ Name withheld to protect the individual's identity.

² The documents the Petitioner provides on appeal related to the Spanish proceeding are not translated into English in accordance with 8 C.F.R. § 103.2(b)(3).

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With respect to the effect of the ecclesiastical annulment, the Appellate Division of the [REDACTED] found that “because the religious annulment considers different issues [than the New Jersey divorce action] and was given no civil effect by the Spanish courts before the complaint [for divorce] was filed in New Jersey, the [REDACTED] acquired jurisdiction before the courts of Spain.” *Id.* at 710. In support of its finding, the court cited *Bass v. DeVink*, in which the court held that in “[a]pplying principles of comity, we have long adhered to the general rule that the court first acquiring jurisdiction has precedence absent special equities.” 765 A.2d 247 (N.J. App. Div. 2001), *certif. denied*, 773 A.2d 1156 (N.J. 2001).

The Appellate Division also addressed the effect of an ecclesiastical annulment under New Jersey law and noted:

Contrary to the assertions of [the Petitioner], the Constitution of Spain does not provide that ecclesiastic judgments by the Church are given automatic civil effect. *See Constitución Española*, Part I, Ch. 2, § 16. According to clause VI of the Agreement of 28 July 1976 between the Holy See and the Spanish State, “ecclesiastical resolutions shall be considered valid under civil law if declared in compliance with State Law by sentence of the competent Civil Court.” *Boletín Oficial del Estado (B.O.E.)*, 1976, 230. In this case, no civil recognition of an annulment was made by a competent, Spanish civil court. In fact, [the Petitioner] has provided no proof that the ecclesiastic tribunal actually granted an annulment. Accordingly, even assuming that a religious annulment had been granted, without civil recognition by the Spanish courts before the filing of the [REDACTED] action, an ecclesiastical annulment alone would not be cognizable in New Jersey as a first-filed action.

918 A.2d at 493. Accordingly, the Petitioner’s marriage to P-I- terminated on August 23, 2006, which is the date the [REDACTED] issued the divorce judgment, and more than nine years before she filed her VAWA petition. Regarding the Petitioner’s claim that P-I- obtained the divorce through fraud, the Petitioner has not provided any evidence to show that the New Jersey divorce judgment was invalidated, withdrawn, or modified by a court of law with authority over the matter or that the divorce judgment is otherwise considered invalid. To the contrary, the Appellate Division of the [REDACTED] thoroughly considered the legal basis for the divorce judgment and dismissed the Petitioner’s appeal, and the [REDACTED] subsequently denied a petition for certification of the divorce judgment. Accordingly, the divorce judgment is legally binding.

We find no error in the Director’s decision to deny the Petitioner’s VAWA petition because a petitioner who has divorced her abusive spouse must file her VAWA petition within two years of her divorce. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. As the Petitioner filed the VAWA petition nearly nine years after her divorce, she has not established a qualifying relationship with an abusive U.S. citizen, and consequently, also cannot demonstrate her corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on such a relationship.

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III. CONCLUSION

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 M-J-C-*, ID# 10055 (AAO June 13, 2016)