



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

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

MATTER OF I-B-

DATE: JUNE 22, 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 Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director, Vermont Service Center, initially approved the petition. The Director subsequently issued a notice of intent to revoke (NOIR), to which the Petitioner timely responded with additional evidence that the Director found insufficient to establish his eligibility. The Director concluded that the Petitioner did not establish that his marriage to his first spouse was terminated, that his marriage to the U.S. citizen was valid, and that he had a qualifying relationship with a U.S. citizen. The Director accordingly revoked the approval of the Petition. The Petitioner filed a timely appeal.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that his first marriage was legally terminated, that his marriage to his U.S. citizen spouse is valid, and that he has a qualifying relationship with a U.S. citizen.

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

I. APPLICABLE LAW

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)].

Section 204(a)(1)(A)(iii) 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).

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

(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 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)(i), which states, in pertinent part:

(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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

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II. ANALYSIS

The Petitioner is a citizen of Jordan and self-identifies as a national and citizen of Palestine.¹ He married his first spouse, R-B-,² in 1983 in [REDACTED]. The record contains a divorce document stating that on [REDACTED] 2007, the Petitioner divorced R-B- in [REDACTED]. A marriage contract indicates that the Petitioner and R-B- remarried each other in [REDACTED] on the same day. A second divorce document indicates that on [REDACTED] 2007, the Petitioner divorced R-B- in [REDACTED]. On July 27, 2007, the Petitioner entered the United States. A third divorce document indicates that on [REDACTED] 2009, the Petitioner divorced R-B- in [REDACTED]. On [REDACTED] 2009, the Petitioner married M-T-, a U.S. citizen, in New Jersey.³

The Director revoked the approval of the petition based upon her determination that the divorce between the Petitioner and R-B- was not valid, and as such, the Petitioner's marriage to M-T- was bigamous and void. Upon a full review of the record as supplemented on appeal, the Petitioner has not overcome the Director's grounds for revocation. The appeal will be dismissed and approval of the petition will remain revoked for the following reasons.

A. Qualifying Relationship

A marriage will be valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *See Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of all the self-petitioner's prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). When, as in the present case, the petitioner relies on a foreign law to establish eligibility, the application of the foreign law is a question of fact that must be proven by the petitioner. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

According to a report prepared for us by the Global Legal Research Center, Law Library of Congress (LOC report), marriage and divorce in the West Bank are regulated by Law No. 61 of 1976 on Personal Status (1976 Law). *See* http://www.mowa.pna.ps/Local_laws/LL2.pdf (in Arabic), archived at <https://perma.cc/ZCJ4-R7DJ>. The report states that under articles 17 and 101 of the 1976 law, the Sharia court must authenticate or notarize marriage and divorce. Further, Law No. 2 of 1999 on Civil Status (1999 Law) regulates the recordation of marriages and divorces in a national registry. *See* <http://muqtafi.birzeit.edu/pg/getleg.asp?id=13141> (in Arabic), archived at <https://perma.cc/8N97CTHJ>. Under article two of the 1999 law, a Department of Civil Status has

¹ The Petitioner entered the United States with a Jordanian passport. The record contains copies of the Petitioner's birth certificate indicating that he was born in Beit Leqya, the West Bank, [REDACTED] and the Petitioner's international driver's license, both issued by the Palestinian National Authority.

² We provide the initials of individual names throughout this decision to protect identities.

³ The record reflects that the Petitioner first married M-T- in 2008, and USCIS determined in connection with the adjudication of Form I-130, Petition for Alien Relative, filed by M-T- on behalf of the Petitioner, that this marriage was void, as the record did not establish the termination of the Petitioner's marriage to R-B-.

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been created within the Ministry of Interior (Dept. of Civil Status). Under articles 26 and 27 of the 1999 law, the authorities in charge of authenticating marriage and divorce actions, and the clerks of the courts that rule on such matters, are required to inform the Dept. of Civil Status of marriage and divorce actions in order for them to be recorded. The LOC report states that under article 12, recordation by the Dept. of Civil Status provides evidence of veracity that cannot be controverted except by judicial decision.

In her NOIR, the Director stated that an investigation showed that the Petitioner and R-B- were still listed as legally married in the records of the [REDACTED] in 2010, and requested that the Petitioner submit further evidence of the legal termination of his marriage to R-B-. The Director informed the Petitioner that in order for the divorce to be considered valid for immigration purposes, the divorce must have been registered with the civil authorities.

In response to the NOIR, the Petitioner submitted a Deed of Non-Impediment in which the Petitioner's mother certified before the [REDACTED] that in accordance with the divorce decree of [REDACTED] 2009, the Petitioner was divorced and free to marry as of [REDACTED] 2009. The Petitioner indicated that he had submitted a divorce decree registered with the Civil Authorities in [REDACTED] however, the record does not show that the Petitioner's [REDACTED] 2009, divorce decree was registered with the Dept. of Civil Status.

On appeal, the Petitioner asserts that the divorce of [REDACTED] 2009, was obtained in a legitimate [REDACTED] authorized to adjudicate divorce by the Palestinian government, and we have no authority to go behind a valid divorce. He submits a letter from the [REDACTED] New Jersey. The Imam states that he has examined the Deed of Non-Impediment registered with the Civil Authority, and that the divorce was irrevocable and final as of [REDACTED] 2009. However, the Deed of Non-Impediment shows that it was registered with the Ministry of Justice, not with the Dept. of Civil Status.⁴

The lack of recordation of the divorces in this case is problematic because of unexplained omissions and inconsistencies in the record. The divorce document of [REDACTED] 2007, does not refer to the divorce or the remarriage of [REDACTED] 2007, but only refers to the marriage of the Petitioner and R-B- in 1983. The [REDACTED] 2009, divorce document does not refer to the [REDACTED] 2007 divorce, but only to the [REDACTED] 2007, divorce and remarriage.⁵ The record contains no explanation for these omissions. Further, the Petitioner's father declared in a previous Deed of Non-Impediment that the [REDACTED] 2009, divorce was an "irrevocable divorce of minor degree." If the [REDACTED] 2009,

⁴ The LOC report states that a deed of non-impediment certifies the fact that the person concerned is free to marry, and has no specific legal effect on its own.

⁵ According to the LOC report, under the 1976 law, the irrevocability of divorce is of two degrees: under article 99, the first two divorces are of minor degree, and the parties may remarry each other easily; under article 100, the third divorce is of major degree, and the parties cannot remarry until the divorced wife marries another man, consummates the marriage, and divorces him.

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divorce were the Petitioner's third divorce, it would constitute a divorce of major degree. The record contains no explanation for the inconsistencies between the number of total divorces and the Deed of Non-Impediment. Without an explanation in the record, these divorce documents are given less evidentiary weight.

The Petitioner has not established that the divorce documents were recorded with the Dept. of Civil Status as prescribed by the 1999 law referenced above, and has not submitted competent evidence that his marriage to R-B- was legally terminated under the law of the Palestinian National Authority. *See Matter of Annang*, 14 I&N Dec. at 502. Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner was free to marry M-T- on [REDACTED] 2009, and that the Petitioner's marriage to M-T- was void from its inception. *See Hansen v. Fredo*, 303 A.2d 333, 334 (N.J. Super. Ct. Ch. Div. 1973) (a marriage contracted in New Jersey when one of the parties is lawfully married to another is void *ab initio*).

The Petitioner has not established that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

B. Good Faith Marriage

Even if the Petitioner were to establish that his divorce from his first spouse was legally binding and thus that his marriage to M-T- is valid, we determine under our *de novo* review authority that the Petitioner is ineligible for the benefit because the record does not demonstrate that he married M-T- in good faith.

There are several inconsistencies of record that cast doubt on the Petitioner's intention to marry M-T- in good faith. When the Petitioner applied for his nonimmigrant visa with the U.S. Department of State in 2007, he was married. Three weeks later, he divorced R-B- and remarried her on the same day. The record indicates that the Petitioner told USCIS officials that he divorced her because she did not want to go to the United States, and about a week after the divorce, he learned that R-B- would not keep their children because of the divorce, and a sheik advised him to remarry R-B-. This statement is inconsistent with the record, which shows that the Petitioner remarried R-B- on the same day he divorced her, not a week later. Two days after the Petitioner remarried R-B-, he divorced her for the second time, and two days thereafter entered the United States. As noted above, the divorce document of [REDACTED] 2007, does not refer to the divorce or the remarriage of [REDACTED] 2007, and the [REDACTED] 2009, divorce document does not refer to the [REDACTED] 2007 divorce. There is no explanation for these omissions in the divorce documents. When viewed as a whole, the unexplained inconsistencies, incomplete divorce documents, and lack of recordation of the divorces cast doubt on the *bona fides* of the Petitioner's marriage to M-T-.

The evidence fails to establish the Petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. As the appeal will be dismissed on other grounds, we need not remand to the Director to issue a new NOIR to the Petitioner outlining the reasons why the petition was erroneously approved.

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 I-B-*, ID# 16178 (AAO June 22, 2016)