

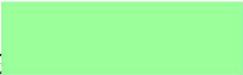


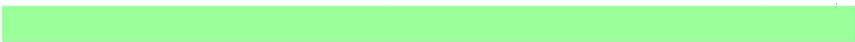
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **AUG 21 2013**

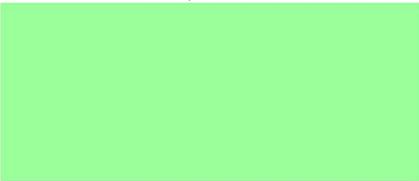
Office: VERMONT SERVICE CENTER

File: 

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

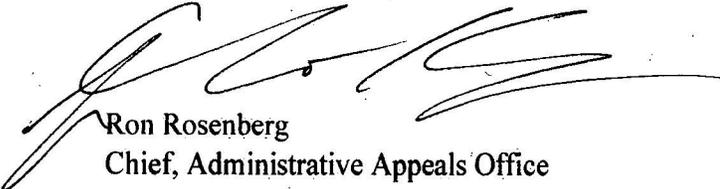
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center director denied the immigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition finding that the petitioner had not established a qualifying relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification because of that relationship.

On appeal, the petitioner, through counsel, submits a brief statement on the Form I-290B and additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

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 clause (ii) or (iii) of subparagraph (B) 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 evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

- (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.

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(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by . . . 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 . . . the self-petitioner . . . .

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of the Dominican Republic who married J-P-<sup>1</sup>, a national of the Dominican Republic and lawful permanent resident of the United States, on December 25, 1986 in the Dominican Republic. J-P- filed a Form I-130 Petition for Alien Relative on behalf of the petitioner which was approved and the petitioner entered the United States as a lawful permanent resident on March 12, 1991. On December 31, 2007, the petitioner's application for naturalization was denied because her administrative record contained evidence that J-P- divorced the petitioner on July 25, 1990 in the Dominican Republic. The petitioner was subsequently placed in removal proceedings for willful misrepresentation of her marital status at the time of her immigrant visa application. On August 15, 2012, the Boston Immigration Court administratively closed the petitioner's removal proceedings pending final adjudication of the instant Form I-360, which she filed on July 25, 2011. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal have overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

#### *Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. The petitioner submitted her marriage certificate, divorce decree from the Dominican Republic, and a personal affidavit. In her affidavit, the petitioner stated that when she reunited with her husband in the United States, she discovered that J-P- was having an affair and living with another woman. She stated that J-P told her that he had discussed with his cousin in the Dominican Republic the option of divorcing the petitioner but that he did not go through with it. The petitioner explained that they reconciled and had two more children before finally separating in 2001. The petitioner stated that neither she nor J-P- believed that they were divorced in the Dominican Republic because neither of them ever knew of or attended any court hearing. The applicant explained that she only learned that their divorce was registered in the Dominican Republic during her naturalization application process. The director denied the instant Form I-360 for failure to establish that the petitioner filed her self-petition within two years of her divorce from J-P-. The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying relationship with a lawful permanent resident of the United States and is eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

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

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On appeal, counsel argues that the petitioner established that she had a qualifying relationship with J-P- because the divorce obtained by J-P- is invalid under Dominican law. Counsel asserts that the divorce decree fails to meet the requirements as set forth in *Matter of Luna*, 18 I. & N. Dec. 385 (BIA 1983) as neither party was notified of a court date and the judgment was not timely pronounced. Counsel further submits an affidavit from J-P- dated July 12, 2011 in which he states that he and the petitioner consider themselves to be married as neither of them received notice of any court hearing or divorce judgment in the Dominican Republic.

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)). On appeal, counsel has demonstrated that the petitioner's divorce was invalid under the laws of the Dominican Republic. Under Dominican law, the plaintiff to a divorce action must serve the respondent with a summons to attend the court hearing and a civil government official may not pronounce a divorce judgment without evidence that the respondent was summoned to attend the pronouncement of the final judgment. Articles 4, 17 of the Dominican Divorce Law, Law 1306-bis, Civil Code of the Dominican Republic. A divorce must be pronounced within two months of the final judgment or within two months of the expiration of the appeal period, which is two months after notification of the judgment. *Id.* at Arts. 16-18. In this case, the petitioner's Dominican divorce certificate states that the divorce judgment was made on May 10, 1990, but the pronouncement did not occur until over two months later on July 25, 1990. The certificate does not state the date of any notice provided to the petitioner.

In *Matter of Luna*, the Board of Immigration Appeals acknowledged that none of the Dominican divorce cases before it stated the date the respondent was notified of the judgment, but nonetheless concluded that a pronouncement of a Dominican divorce by a civil registry official would be considered *prima facie* evidence of compliance with the time and notice requirements. *Matter of Luna*, 18 I&N Dec. at 389. However, the Board held that such a pronouncement was rebuttable if irregular on its face or the record contained other evidence of noncompliance. *Id.* In the Dominican divorce found valid by the Board in *Luna*, the divorce decree stated that the respondent "did not appear at the hearing in spite of having been legally summoned." *Id.* at 387. In this case, the certificate states that the judge "ratified the pronounced [divorce] finding in hearing against the defendant [the petitioner], for not being present." The document does not state the date of any notice given to the petitioner or otherwise indicate that she was properly summoned to appear at the hearing or the pronouncement. Even assuming the petitioner was notified on the date of the judgment, as the Board did in *Luna*, the pronouncement was still untimely. Moreover, the record contains credible statements by both the petitioner and J-P- that she was never notified of the judgment. Accordingly, the petitioner's Dominican divorce certificate is irregular on its face and the record shows that it did not comply with the time and notice requirements for pronouncement of a divorce under Dominican law. The preponderance of the evidence demonstrates that the

petitioner's divorce was invalid under Dominican law. Consequently, it will not be recognized in these proceedings.

Therefore, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

*Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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 now been met. On appeal, the petitioner has overcome the director's grounds for denial and she is consequently eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.