



U.S. Citizenship
and Immigration
Services

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JAN 09 2007



FILE: [REDACTED]
EAC 03 106 50494

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



PETITION: Petition for Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The petitioner filed a motion to reopen. The director granted the motion and denied the visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to 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 for failure to establish a qualifying relationship with a U.S. lawful permanent resident and eligibility for preference immigrant classification based on such a relationship because the record did not establish the lawful permanent residency of the petitioner's second husband.

Counsel timely appealed. On the Form I-290B, counsel stated that he would send a brief and/or evidence to the AAO within 30 days. Counsel dated the appeal April 20, 2006. Over six months later, on October 26, 2006, the AAO notified counsel that it had not received any further brief or evidence and requested counsel to send a copy of any such documentation within five business days. To date, over two months later, the AAO has received no response from counsel.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced a U.S. lawful permanent resident 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 lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

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

- (i) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed[.]

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further 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.
- (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.

The regulation at 8 C.F.R. § 103.2(b) also states, in pertinent part:

- (17) *Verifying claimed citizenship or permanent resident status.* . . . If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Pertinent Facts and Procedural History

The record in this case provides the following relevant facts and procedural history. The petitioner is a native and citizen of Ecuador who states on the Form I-360 that she entered the United States without inspection on December 8, 1995. On March 11, 1997, the petitioner married J-R-*, a U.S. citizen, in New York. On December 5, 1997, the Newark, New Jersey District Director denied the Form I-130, Petition for Alien Relative, filed by J-R- on the petitioner's behalf because the record established that their marriage was made solely to procure permanent residency for the petitioner. The Board of

* Name withheld to protect individual's privacy.

Immigration Appeals dismissed J-R-'s appeal on May 24, 1999. On June 12, 2001, the petitioner and J-R- were divorced.

On January 11, 2002, the petitioner married M-E-*. On August 27, 2002, the former couple was divorced. On February 15, 2003, the petitioner filed the instant Form I-360 based on her relationship with M-E-. On December 22, 2003, the director issued a Request for Evidence of the lawful permanent resident status of M-E-. The petitioner, through counsel, timely responded. On March 15, 2004, the director denied the petition for lack of a qualifying relationship and eligibility for immigrant classification based on such a relationship. Counsel filed a motion to reopen proceedings on April 15, 2004. On March 10, 2006, the director granted the motion, but affirmed the previous denial of the petition. Counsel timely appealed.

Qualifying Relationship and Eligibility for Preference Immigrant Classification

The director stated that searches of Citizenship and Immigration Services (CIS) records based on the information provided by the petitioner failed to establish that M-E- was a lawful permanent resident of the United States. However, upon further review, the AAO has found that CIS records show that M-E- became a lawful permanent resident of the United States on June 11, 1986 and maintained that status through the date that this petition was filed. The record sufficiently documents the abuse of M-E- perpetrated against the petitioner and indicates that their divorce was connected to his battery or extreme cruelty. Accordingly, the petitioner had a qualifying relationship with M-E-, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, and was eligible for preference immigrant classification under section 203(a)(2)(A) of the Act based on their relationship, as required by 204(a)(1)(B)(ii)(II)(cc) of the Act.

Approval Barred Pursuant to Section 204(c) of the Act

Beyond the director's decision, section 204(c) of the Act bars approval of this petition.

Section 204(c) of the Act states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or

* Name withheld to protect individual's privacy.

- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). CIS may rely on any relevant evidence in the record, including evidence from prior CIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

In this case, the record shows that the petitioner's former marriage to J-R- was entered into for the purpose of evading the immigration laws and we are consequently barred from approving her self-petition pursuant to section 204(c) of the Act. In connection with the Form I-130 filed by J-R- on the petitioner's behalf, the petitioner and J-R- were interviewed separately. The record shows that the petitioner and J-R- gave significantly different answers to 17 questions, including conflicting accounts of where the former couple spent their wedding night and when they moved in to their purported marital residence. The former couple was unable to explain these discrepancies. In addition, the only supporting documentation submitted with the Form I-130 were five photographs of the former couple taken on their wedding day and on one other, unidentified occasion; eight electricity bills, letters or receipts jointly addressed to the former couple; a letter stating that the former couple's joint banking account was opened just two months before their immigration interview; and a letter jointly addressed to the former couple regarding their application for a credit card account and stating that the company was unable to verify their address. A full review of these documents and the record of the serious discrepancies in the former couple's responses at their separate interviews supports the district director's determination that the petitioner's marriage to J-R-

was entered into for the purpose of evading the immigration laws. Consequently, section 204(c) of the Act bars the approval of the instant petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.