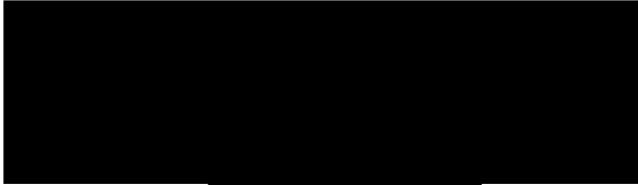


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**U.S. Citizenship
and Immigration
Services**

B9



FILE:

EAC 04 106 52343

Office: VERMONT SERVICE CENTER

Date:

MAY 17 2007

IN RE:

Petitioner:



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

ON BEHALF OF PETITIONER:



ENTIRE FC COPY

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.

Maura Deadrick
Robert P. Wiemann, Chief
fr Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director denied the petition pursuant to section 204(c) of the Act because the record showed that the petitioner had previously sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading the immigration laws. The director also denied the petition due to the petitioner's ineligibility for immediate relative classification based on her relationship with her second husband.

On appeal, counsel submits a brief.

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).

Section 204(a)(1)(J) of the Act 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].

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 . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or
- (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.

Pertinent Facts and Procedural History

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Kenya who entered the United States on March 11, 1993 as a nonimmigrant student (F-1). On April 9, 1994, the petitioner married J-R-, * a U.S. citizen, in Minnesota. J-R- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 19, 1994. On July 28, 1994, the petitioner and J-R- were divorced. On September 14, 1994 the Bloomington, Minnesota District Director issued a Notice of Intent to Deny (NOID) the Form I-130 because the petitioner's marriage to J-R- was determined to have been entered into for the purpose of evading the immigration laws. October 11, 1994, J-R- withdrew his Form I-130 petition. On November 28, 1994, the district director issued a decision reiterating the finding of marriage fraud and terminating the petition pursuant to J-R-'s withdrawal.

Two weeks after her divorce from J-R-, the petitioner married P-C-, * a U.S. citizen, on August 13, 1994, in Las Vegas. On December 20, 1994, P.C. filed a Form I-130 in the petitioner's behalf. On August 10, 1995, the Las Vegas District Director denied the Form I-130 pursuant to section 204(c) of the Act and due to P-C-'s abandonment. The former couple divorced on December 12, 1995. On December 31, 1995, P-C- married another woman named [REDACTED]. On April 11, 1996, the petitioner gave birth to her daughter. Neither J-R- nor P-C-is listed on the child's birth certificate.

On December 30, 1996, the petitioner was served with an Order to Show Cause and Notice of Hearing in Deportation Proceedings, charging her with violating the terms of her nonimmigrant status. On May 13, 1997, P-C- divorced [REDACTED]. On June 17, 1997, the petitioner remarried P-C- in Nevada. P-C- subsequently filed a second Form I-130 on the petitioner's behalf. On September 24, 1997 an immigration judge with the Las Vegas Immigration Court terminated the deportation proceedings against the petitioner to allow adjudication of P-C-'s Form I-130 petition and the petitioner's corresponding Form I-485, Application to Adjust Status. On September 25, 2002, the Las Vegas District Director denied the Form I-130 petition pursuant to section 204(c) of the Act and due to P-C-'s abandonment.

The petitioner filed this Form I-360 petition on February 26, 2004. The Vermont Service Center Director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into her second marriage with P-C-. The petitioner, through counsel, timely responded with additional evidence. On July 7, 2005, the director issued a NOID stating that the petition would be denied absent further evidence that the petitioner entered into marriage with P-C- in good faith and pursuant to section 204(c) of the Act. The petitioner, through counsel, timely responded to the NOID with further evidence. On January 6, 2006, the director denied the petition pursuant to section 204(c)

* Name withheld to protect individual's identity.

of the Act and for lack of eligibility for immediate relative classification based on her second marriage to P-C-.¹

The petitioner, through counsel, timely appealed. On appeal, counsel claims that J-R-'s Form I-130 filed on the petitioner's behalf was not denied due to marriage fraud and that the petitioner is not required to establish the bonafides of her marriage to J-R-. We agree with the director's determination that section 204(c) bars approval of this petition and that the petition must also be denied for lack of the requisite eligibility for immediate relative classification based on the petitioner's second marriage to P-C-. Beyond the director's decision, approval of this petition is further barred by section 204(g) of the Act and because the petitioner failed to establish that she entered into her second marriage with P-C- in good faith.

Section 204(c) of the Act

The regulation corresponding to section 204(c) of the Act, 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). Citizenship and Immigration Services (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).

¹ The director further denied the petition for lack of a qualifying relationship as the spouse of a U.S. citizen. However, the record shows that the petitioner's June 17, 1997 marriage to P-C- was valid.

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 the instant petition pursuant to section 204(c) of the Act. The record shows that at the interview of J-R- and the petitioner on June 27, 1994, J-R- stated that he had previously lived with the mother of his two children, [REDACTED], and that he and the petitioner spent significant amounts of time with his children. J-R- gave the officer [REDACTED]'s telephone number as a reference. However, [REDACTED] testified that she did not previously know of J-R-'s marriage to the petitioner and that her children only knew of the petitioner as J-R-'s roommate. [REDACTED] also stated that on the afternoon of the interview with J-R- and the petitioner, J-R- left her a message asking her not to answer her telephone until after 6:00 p.m. because someone would be calling to ask her questions and he wanted to speak with her first. [REDACTED] sent a copy of the recorded message to the adjudicating officer. In a subsequent letter to the officer, [REDACTED] stated that J-R- "admitted that he only got married to keep [the petitioner] in the United States" and that J-R- refused to tell their children that he had married the petitioner because it was "not a real marriage."

On appeal, counsel claims "the basis for the mistaken belief that there was fraud came from a letter from a spurned girlfriend of [J-R-] who he was having an affair with while he was married to [the petitioner]." The record contradicts counsel's assertion. The record contains an audiotape recording of an interview with [REDACTED] in which she states that on June 25, 1994, two days before the officer's interview with J-R- and the petitioner, she spoke to J-R- regarding his relationship with his girlfriend, [REDACTED]." In a subsequent letter, [REDACTED] stated that J-R- had ceased his relationship with [REDACTED] and was currently involved with another woman. In her written and oral testimony, [REDACTED] indicated that her own recent interactions with J-R- were not romantic, but were limited to their mutual care for their children.

More importantly, the record shows that the director's determination was not based solely on [REDACTED] testimony. In the September 14, 1994 NOID, the director also cited "the surreptitious nature of the testimony of the beneficiary [the petitioner in this case] in which she hid the true nature of the details of her life with [J-R-]." In addition, the officer's memorandum regarding the former couple's interview states that the petitioner failed to give specific details when asked pertinent questions. For example, the officer states that when asked when she met J-R-, the petitioner answered, "well, it's hard to tell" and when asked what was hard to tell, the petitioner did not respond. The director further cited J-R-'s "refusal to appear for a second interview."

The only relevant supporting evidence submitted with J-R-'s Form I-130 petition and the petitioner's concurrently filed Form I-485 application were copies of joint automobile insurance policy cards valid from May 26, 1994 to November 26, 1994 and a blank, voided deposit ticket for a joint bank account. The former couple submitted no bank statements or other evidence showing a history of usage of the account by both J-R- and the petitioner.

On appeal, counsel also claims that J-R-'s Form I-130 petition "was not denied due to marriage fraud." While the Bloomington, Minnesota District Director's November 28, 1994 decision states

that all action on the petition was terminated pursuant to J-R-'s withdrawal of the petition, the decision reiterates, "It was determined that the marriage was a matter of convenience, designed to evade the law and solely to confer a benefit upon [the petitioner]." In addition, the September 14, 1994 NOID explicitly states: "[I]t has been determined that (1) [the petitioner's] marriage to you is a sham; (2) it is one of convenience; and (3) it was entered into for the purposes [sic] of evading the immigration laws." The record thus clearly documents the Bloomington, Minnesota District Director's determination that the petitioner's marriage to J-R- was made for the purpose of evading the immigration laws.

On appeal, counsel further claims that the director improperly imposed the burden of proof on the petitioner to establish that her marriage to J-R- was entered into in good faith. Counsel is mistaken. The director granted the petitioner the opportunity, through the NOID, to submit evidence of her bonafide relationship with J-R- in order to overcome the bar to approval of the instant petition under section 204(c) of the Act. The burden of proof to establish eligibility for the benefit sought in these proceedings, as in all visa petition proceedings, remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In response to the NOID, the petitioner submitted documentation related to her marriage to J-R- that was already in the record. Accordingly, she did not overcome the previous finding that the petitioner married J-R- for the purpose of evading the immigration laws.

A full, independent review of the record shows that the Bloomington, Minnesota District Director correctly determined that the petitioner and J-R- married solely to procure immigration benefits for the petitioner. Accordingly, the Las Vegas District Director properly denied P-C-'s two Form I-130 petitions filed on the petitioner's behalf pursuant to section 204(c) of the Act (and due to P-C-'s abandonment). Counsel's claims on appeal do not overcome the director's determination that section 204(c) of the Act also bars the approval of the instant petition.

Good-Faith Entry into Marriage with P-C-

Beyond the director's decision, the petitioner failed to establish that she entered into marriage with P-C- for the second time in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

This eligibility requirement is 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), 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.

* * *

(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 record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with P-C- for the second time, on June 17, 1997:

- The December 15, 2003 psychological assessment of the petitioner by Geri Arnold;
- August 28, 2005 letter of [REDACTED];
- A joint apartment lease signed by the petitioner and P-C- on January 7, 2003;
- An addendum to a residential lease listing the petitioner and P-C- as the tenants and signed by the former couple on July 3, 2000;
- Copy of a residential lease application signed by the petitioner and P-C- on October 27, 1997 and a copy of the corresponding lease listing the former couple as tenants of an apartment in Cape Cod Village, but signed only by the petitioner on November 26, 1997;
- Three documents relating to the former couple's termination of residency at Cape Cod Village on February 15, 2000;
- A Certificate of Health Plan Coverage from HMO Nevada which shows that P-C- was covered under the petitioner's insurance policy from March 1 to December 31, 2000;
- A letter from Health Plan of Nevada stating that P-C- was covered under the petitioner's health insurance policy from January 1, 2001 through January 31, 2002;
- A dental insurance statement showing that P-C- was covered under the petitioner's insurance and was treated on October 18, 2002;
- Copy of a joint automobile insurance policy declaration dated January 24, 2003 and effective from February 26, 2003 to February 26, 2004;
- The Forms I-130 and Form I-134, Affidavit of Support, filed by P-C- on the petitioner's behalf;
- Copies of undated greeting cards from P-C- to the petitioner;
- Photographs and copies of photographs of the petitioner and P-C-;

- Copy of the first page of a Nevada State Bank business checking account statement for “Magistar International” jointly addressed to the petitioner and P-C- for the period December 1 to 31, 2002; and
- Printout dated November 15, 2004 from the website of the Nevada Secretary of State showing that the petitioner was the president, secretary and treasurer of Magistar International and that the corporation’s registration was revoked on an unspecified date.

In her assessment of the petitioner, [REDACTED] provides the following description of the petitioner’s relationship with P-C-:

[The petitioner] started to hangout with the man who had introduced her to her first husband. [P-C-] and [the petitioner] courted and eight months later they decided to move to Las Vegas and marry. They married the 13th of August 1994. [P-C-] traveled back and forth to Russia and the Philippines due to his profession. In December 1995 they divorced. [The petitioner] was not comfortable with this arrangement as she has no family or a support system. [P-C-] returned in 1997 and again they married, June 17th, 1997.

The petitioner herself provided no testimony regarding how she met P-C-, their initial courtship, wedding, first marriage, divorce, reconciliation, remarriage or any of their shared experiences, apart from the abuse. The only other testimony, of [REDACTED], also fails to support the petitioner’s claim. [REDACTED] states that he and his wife were friends and close neighbors of the petitioner and P-C-. He states, “[I know of their relationship as a couple who both participate in the raising of their daughter[.]” [REDACTED] provides no probative details and does not further explain the basis for his knowledge of the petitioner’s relationship with P-C-.

The relevant documents also fail to establish that the petitioner remarried P-C- in good faith on June 17, 1997. The residential leases and related documents show that the petitioner and P-C- resided together for parts of 2000 and 2001, from January 8 to December, 2003 and that they applied for an apartment together on October 27, 1997. The dental and health insurance policy documents also show that P-C- was covered under the petitioner’s plans from March 1, 2000 through January 31, 2002 and the automobile insurance declaration shows that they owned a joint policy effective on February 26, 2003. While these documents support the petitioner’s claim to some extent, they are outweighed by the remaining evidence and the lack of probative testimony by the petitioner regarding the questionable circumstances of her second marriage to P-C-.

The Forms I-130 and the Form I-134 filed by P-C- show that he twice filed a visa petition for the petitioner, but these documents do not establish the petitioner’s own good-faith in entering their second marriage. The undated greeting cards express P-C-’s feelings for the petitioner, but they do not demonstrate the petitioner’s own good faith. The photographs show that the petitioner and P-C- were together on three occasions, but the pictures alone are insufficient to establish the petitioner’s claim.

The incomplete joint business checking account statement fails to demonstrate that the petitioner and P-C- commingled their assets during their marriage. In fact, the printout from the Nevada Secretary of State's office shows that only the petitioner held office in the corporation and that the corporation's registration was revoked on an unspecified date. The petitioner submitted no evidence that she and P-C- maintained joint, personal banking accounts or otherwise commingled their assets during their marriage.

The petitioner submitted no testimony regarding how she met P-C-, their initial courtship, wedding, first marriage, their reconciliation and remarriage or any of their shared experiences, apart from the abuse. She also does not explain why she and P-C- decided to remarry only one month after P-C-'s divorce from [REDACTED] and just one day before the first scheduled hearing in her deportation proceedings on June 18, 1997. In sum, the evidence fails to establish that the petitioner entered into her second marriage with P-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Beyond the director's decision, section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this case shows that the petitioner remarried P-C- while she was in deportation proceedings. The record does not indicate that the petitioner resided outside of the United States for two years after her second marriage to P-C-.

The bona fide marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that she entered into her second marriage with P-C- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the

heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Eligibility for Immediate Relative Classification

We concur with the director's determination that the petitioner did not demonstrate that she was eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on her second marriage to P-C-. The corresponding regulation at 8 C.F.R. § 204.2(c)(2)(1)(iv) states, "*Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act [and] section 204(g) of the Act[.]" As previously discussed, section 204(c) of the Act bars approval of this petition due to the reaffirmed determination that the petitioner's prior marriage to J-R- was entered into for the purpose of evading the immigration laws. Section 204(g) of the Act also bars approval of this petition because the petitioner married P-C- for the second time while she was in deportation proceedings and she has not established her eligibility for the bona fide marriage exception at 245(e)(3) of the Act. Accordingly, the petitioner has not demonstrated that she was eligible for immediate relative classification based on her remarriage to P-C-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The petitioner has failed to establish that she entered into marriage with P-C- on June 17, 1997 in good faith and that she was eligible for immediate relative classification based on their second marriage. Accordingly, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. In addition, approval of this petition is barred by sections 204(c) and 204(g) of the Act.

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).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.