U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: NOV 10 2014 Office: VERMONT SERVICE CENTER File:

IN RE: Self-Petitioner:

PETITION: Petition for Immigrant Abused 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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director ("the director") 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 pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition because the petitioner entered into a prior marriage to evade the immigration laws and section 204(c) of the Act, 8 U.S.C. § 1154(c) consequently bars approval of his self-petition. On appeal, the petitioner, through counsel, submits additional evidence.

Relevant Law and Regulations

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 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)(iv), which states, in pertinent part: "*Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act."

Pertinent Facts and Procedural History

The petitioner is a Liberian citizen who married his first wife, A-B-[1], in Liberia on July [redacted] The petitioner last entered the United States on February 14, 1989 as a B-1 nonimmigrant visitor and obtained a Liberian divorce from A-B- on May [redacted] On November [redacted] the petitioner married his second wife, E-J-[2], a U.S. citizen, in Pennsylvania. On December 22, 1989,

[1] Name withheld to protect the individual's identity.
[2] Name withheld to protect the individual's identity.

E-J- filed an immigrant petition (Form I-130) on his behalf which was denied on November 1, 1994 after an investigation by the legacy Immigration and Naturalization Service (INS) revealed that the alleged couple had entered into a sham marriage for the purpose of procuring an immigration benefit. The petitioner, not E-J-, appealed the decision to the Board of Immigration Appeals (BIA) which dismissed the appeal on May 12, 1995 because the petitioner, as the beneficiary of the Form I-130, had no standing to file the appeal. The petitioner divorced E-J- on May and married his third wife and claimed abusive spouse, T-S-[3], a U.S. citizen, on July in Pennsylvania. T-S- filed an immigrant petition on his behalf on May 26, 2004 which was approved in error on August 5, 2004. On November 16, 2004, the petitioner filed an application to adjust his status to that of a permanent resident. On September 24, 2008, U.S. Citizenship and Immigration Services (USCIS) denied the application and revoked the approved immigrant petition filed by T-S- pursuant to section 204(c) of the Act based on his sham marriage to E-J-. The petitioner was placed into removal proceedings on February 13, 2009 and currently remains in proceedings.

The petitioner filed the instant Form I-360 self-petition on December 22, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's eligibility for immigrant classification based on section 204(c) of the Act which bars the approval of an immigrant petition for individuals who have previously sought to be accorded immediate relative or preference status by way of a marriage entered into for the purpose of evading the immigration laws. The petitioner, through counsel, timely responded with additional evidence that the director found insufficient to establish the petitioner's eligibility. Counsel timely appealed. On appeal, counsel submits additional evidence related to the petitioner's prior marriage to E-J-.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The sole issue on appeal is the petitioner's eligibility for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. Counsel's claims and the evidence submitted on appeal fail to overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Section 204(c) of the Act

Section 204(c) of the Act, 8 U.S.C. § 1154(c), 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.

[3] Name withheld to protect the individual's identity.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(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). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the self-petitioner. *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).

The record shows that the director issued a detailed Request for Evidence (RFE) notifying the petitioner that the record indicated he was subject to section 204(c) of the Act and giving him the opportunity to submit evidence of the bonafides of his prior marriage. The record shows that in denying the Form I-360 self-petition, the director reviewed all the submitted and relevant evidence and independently determined that it did not establish the petitioner's eligibility under the applicable standard of proof. We find no error in the director's decision.

The record shows that the petitioner and E-J- were interviewed on September 9, 1993 by an immigration officer in conjunction with the Form I-130. When the interview revealed several unspecified discrepancies, the case was referred for investigation. On October 13, 1993, immigration agents visited the apartment in Pennsylvania at which E-J- and the petitioner claimed to jointly reside, and were greeted instead by , a citizen of Sierra Leone. Ms. stated that she had been residing there with E-J-, the petitioner and his two sons for more than a year and E-J- was not at home because she worked during the day. Ms. was unable to provide the agents with either the location of E-J-'s place of employment or the hours she worked. Inspection of the two-bedroom apartment revealed that one bedroom was occupied by the children and the other contained a closet in which were both men's and women's clothing. Ms. stated that she kept her clothes in the bedroom but slept on the floor or a couch. The agents found numerous documents and pieces of mail in the apartment, all addressed to the petitioner alone with the exception of a single delinquent tax bill from two years earlier on which E-J- was named. When asked to produce any document containing E-J-'s name, Ms. provided an INS Notice of Intent to Deny (NOID) and one photograph of E-J- and the petitioner. Ms. also showed the agents an insurance policy naming E-J- as the insured and her son as the beneficiary. A yellow "crib sheet" was discovered on which was listed E-J-'s birth date, astrological sign, measurements, shoe size, ring size, and foods she likes and does not like, among other things.

A joint residential lease dated October 1, 1989 listed the landlord's address, and the immigration agents went to that apartment where they interviewed , the owner of the apartment complex. Ms. stated that she was familiar with all the tenants due to the relatively small size of the complex, but when shown photographs of the petitioner and E-J-, she only recognized the petitioner. Ms. identified the apartment in which the petitioner resided and stated that he lived there with another African female, not the one in the photograph. The agents next interviewed the occupant of the apartment directly across from the petitioner's. When shown the photographs, the occupant recognized the petitioner but did not recognize E-J-. She stated that another African woman resided in the apartment with the petitioner but when asked to provide her own name, the occupant declined, stating that she did not want to get the petitioner in trouble.

A record check made with the Department of Welfare revealed that E-J- had been receiving food stamps, medical assistance, and cash at an address in Philadelphia, Pennsylvania and they were unaware that the petitioner had claimed her on his income tax returns for 1991 and 1992. On October 23, 1993, immigration agents visited the address at which E-J- was receiving benefits. , a resident of the first floor apartment, stated that he had been living there for ten years and indicated that E-J- was residing on the second floor with two men named In addition, other individuals identified E-J- from her photograph as a person they had seen in the neighborhood.

The record contains correspondence mailed to the claimed joint address of the petitioner and E-J-, including a bank statement and letters from the Internal Revenue Service (IRS). A *de novo* review reveals that, while the documents provided some evidence of intermingled finances, the bank statements did not show that both spouses made deposits and withdrawals over the course of their marriage and the IRS documents were not certified. In addition, the mail correspondence consisted of various letters addressed separately to E-J- and the petitioner and recent magazine subscriptions, and photographs showed the petitioner and E-J- together on different unspecified occasions. Without a probative account of the petitioner's marital intent, these documents and the photographs alone are insufficient to establish the bonafides of the petitioner's marriage or that he married E-J- in good faith, particularly in light of the results of the INS investigation.

In his first affidavit, submitted in conjunction with his Form I-360 self-petition, the petitioner did not address the bonafides of his and E-J-'s marriage. In his second affidavit, submitted in response to the RFE, the petitioner stated that he and E-J- met in April 1989 in Philadelphia, dated until December, got married and moved to He recalled that E-J- worked at a motel, her father suffered a stroke and she had to care for him which resulted in her losing her job. The petitioner claimed that the apartment manager refused to identify E-J- to immigration agents because she did not want to put anyone in trouble, particularly as she and the petitioner had discussed E-J-'s drug use. The petitioner further claimed that the neighbor across from him later said that she told the agents she did not recognize E-J- because she had her own problems and did not need more. He did not explain the absence of affidavits from Ms. and the neighbor in response to the RFE. The petitioner further asserted that Ms. is his sister-in-law and they were not romantically involved; however, it is the lack of a shared and bonafide marital residence with E-J-, not the relationship between the petitioner and Ms. that supports a conclusion

that the petitioner married E-J- to evade the immigration laws. With regard to the "crib sheet," the petitioner claimed that he had taken E-J-'s measurements to give to his sister who was going to make African outfits for her. This does not explain why the sheet also included her shoe size, astrological sign, and food likes and dislikes. He stated that after E-J- was interviewed in conjunction with the immigrant petition, she told him that the interviewing INS officer both threatened and bribed E-J-, telling her that if she "gave the petitioner up" to be deported, the INS officer would give her cash, food stamps and a free apartment, and if she refused, she would go to jail for 25 years. These alleged statements by the INS officer are not supported by the record and have no relevance to the results of the INS investigation, which revealed the lack of a bonafide marriage between the petitioner and E-J-. In addition to his affidavits, the petitioner submitted below a number of photographs of himself and E-J- together on various occasions. As previously noted, without a probative account of the petitioner's marital intent, the photographs alone are insufficient to establish the bonafides of the petitioner's marriage or that he married E-J- in good faith.

On December 12, 2012, counsel submitted the affidavits of five friends. stated that he first became acquainted with the petitioner in approximately 2008, nearly a decade after his divorce from E-J-, and attested generally to his character. stated that they had known the petitioner for more than 20 years. Mr. added that the petitioner once introduced him to his sons and E-J- at the residence, and Mr. stated that he lived for three years with the petitioner "and his family" at the same address. Neither Mr. nor Mr. discussed the petitioner's relationship with E-J- or his marital intent toward her. stated that he resided with the petitioner "and his two boys" at a residence in Pennsylvania from 1996 to 2001. Mr. did not state that either E-J- or T-S- resided in the home with them during that period or that he was aware of the petitioner's relationship with E-J- or his marital intent toward her.

On appeal, the petitioner submits his third affidavit. Therein he reasserts his previous claim that during an interview with INS, the immigration officer offered E-J- money and an apartment if she would admit that their marriage was not real and threatened to incarcerate her for 25 years if she did not. He adds that this happened during E-J-'s second and third interviews with INS and during their first interview, another INS officer made disparaging comments about Africans and their penchant for marrying American women and living "off the tax payer." These claims are not substantiated by the record and the record does not contain an affidavit from E-J- confirming these assertions. For the first time on appeal, the petitioner states that he was present during the questioning of Ms. and the discovery of his "crib sheet." The petitioner claims that he personally escorted an immigration agent to the office of the apartment manager whom he refers to as ' ' It is unclear whether the petitioner is referring to Ms. or another individual, and the record contains no affidavits from anyone named The petitioner claims that when he took the agent to the management office, Ms. recognized E-J- and stated that E-J- resided with the petitioner. He asserts that later, an immigration agent or officer called Ms. on the telephone and threatened to charge her with perjury if she did not recant her prior statement. The petitioner states that he is trying to get an affidavit from Ms. who "is sick now but might be available soon." He does not explain why he never previously obtained an affidavit from Ms. The petitioner asserts that he and E-J- were under lengthy surveillance by INS in 1994 and claims that agents found him and E-J- together at or near their residence on numerous occasions. These assertions are not substantiated by

the record and the petitioner has not explained why he failed to make such claims prior to his appeal.

Counsel himself states on the Notice of Appeal (Form I-290B) that he told the petitioner on numerous occasions that the documents submitted below are insufficient to establish the bonafides of his marriage to E-J-. Counsel asserts, however, that the petitioner has recently found new evidence. The relevant evidence submitted on appeal includes: a joint residential lease dated April 1, 1989; account transcripts from the Internal Revenue Service (IRS) for tax years 1991, 1992 and 1993; a supplemental affidavit by the petitioner; a letter to the petitioner from a prior attorney; a joint 1993 income tax return; school applications for the petitioner's children; and photographs with written descriptions.

The 1993 tax return lists the petitioner and E-J- as filing jointly. However, the corresponding IRS transcript lists only the petitioner's social security number, as do the 1991 and 1992 transcripts. The school applications have a printed "file date" of October 20, 1993 but are not signed. The March 14, 1994 letter from attorney is addressed to the petitioner alone and acknowledges "the INS allegations" concerning his marriage to E-J-. Of the seven photographs, two are of E-J- alone on the same occasion, one shows the petitioner alone, two photographs show the petitioner with coworkers, one photograph shows the petitioner with a friend and another is of two of the petitioner's friends alone. The residential lease appears to have been altered where the name of the petitioner and E-J- appears. Overall, these documents do not demonstrate the bonafides of the petitioner's marriage to E-J- or overcome the director's ground for denial.

We have conducted an independent *de novo* review of the entire record on appeal and found substantial and probative evidence establishing that the petitioner entered into his prior marriage with E-J- in an attempt to evade the immigration laws. Consequently, he is subject to the bar to approval of his self-petition under section 204(c) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denial. Approval of this self-petition is barred by section 204(c) of the Act because the record demonstrates that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. The petitioner has failed to demonstrate that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(c) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.