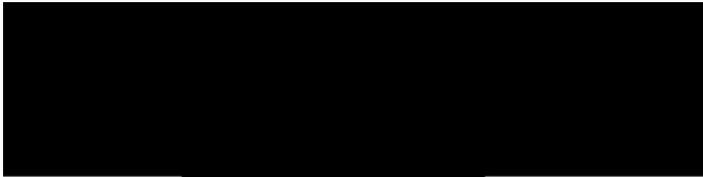


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 20 2006
EAC 04 T19 50359

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special 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:
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
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 classification as a special immigrant pursuant to 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.

On appeal, counsel submits a brief and a second psychological assessment of the petitioner.

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 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 petitioner in this case is a native and citizen of Ghana who entered the United States on August 8, 1997, as a nonimmigrant visitor (B-2). On January 26, 1998, the petitioner married [REDACTED] a U.S. citizen, in New Jersey. On March 19, 1998, [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf. On January 29, 2001, the Newark District director ("district director") denied the Form I-130 because he determined that the couple's marriage was entered into solely to procure permanent resident status for the petitioner. On May 24, 2001, [REDACTED] filed a second Form I-130 on the petitioner's behalf, which was denied on October 28, 2002 pursuant to section 204(c) of the Act. On March 12, 2003, the petitioner was served with a Notice to Appear for removal proceedings charging her with violation of section 237(a)(1)(B) of the Act as an alien who remained in the United States beyond her period of authorized stay. On March 10, 2004, the petitioner filed this Form I-360. On December 20, 2004, the director issued a Notice of Intent to Deny (NOID) this petition pursuant to section 204(c) of the Act. On February 16, 2005, counsel responded to the NOID with a brief and additional evidence. On March 9, 2005, the Newark Immigration Court administratively closed the removal proceedings against the petitioner. On June 21, 2005, the director determined that the record did not overcome the bar of section 204(c) of the Act and denied this petition. Counsel timely appealed.

On appeal, counsel contends that precedent decisions of the Board of Immigration Appeals (BIA) show that section 204(c) of the Act does not bar the approval of this petition and that the petitioner meets all the statutory requirements for immigrant classification under section 204(a)(1)(A)(iii)(II) of the Act.

The record supports the district director's denial of [REDACTED] first and second Form I-130 petitions pursuant to section 204(c) of the Act. Although the BIA has held that section 204(c) of the Act does not bar the approval of a second spousal petition filed by and on behalf of the same parties, the record in this case does not demonstrate that the petitioner and [REDACTED] overcame the grounds for denial of [REDACTED] first Form I-130 petition in their second filing. Moreover, the evidence submitted with this Form I-360 petition fails to overcome the resultant bar of 204(c) of the Act and does not establish that the petitioner entered into marriage with [REDACTED] in good faith.

Section 204(c) of the Act

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.

In the January 29, 2001 decision denying [REDACTED] first Form I-130 petition, the district director stated that the couple was interviewed under oath on January 6, 2000 and that they presented a joint apartment lease, a 1998 joint income tax return and some joint bank statements. The decision lists 17 discrepancies between the answers of [REDACTED] and the petitioner when they were questioned separately about their marital residence and activities and the decision notes that when confronted with these discrepancies, the couple was unable to explain the differences in their responses. The district director determined that these numerous discrepancies and the scant amount of joint documentation established that the marriage was entered into solely for the petitioner to procure permanent residence in the United States. Accordingly, the district director denied the Form I-130 petition.

[REDACTED] did not appeal the denial of his first Form I-130, but filed a second Form I-130 on May 24, 2001. The district director denied the second Form I-130 on October 28, 2002 without interviewing the couple. The district director stated that the only joint documentation submitted with the second Form I-130 was the couple's 1999 joint income tax return. Citing the discrepancies noted in the interview conducted on [REDACTED] first Form I-130, the district director denied the second Form I-130 pursuant to section 204(c) of the Act. [REDACTED] timely appealed the denial of his second Form I-130 and the BIA dismissed his appeal on March 3, 2003.

On appeal, counsel contends that the district director erroneously denied the second Form I-130 pursuant to *Matter of Isber*. In that case, the BIA held that section 204(c) of the Act does not bar the

approval of a second visa petition filed by the same parties if the petitioner can establish that the subsequent bona fides of the marriage. *Matter of Isber*, 20 I&N Dec. 676, 678-79 (BIA 1993). Counsel further states that we should not give conclusive effect to the district director's determination, but should reach our own independent conclusion based on the evidence before us pursuant to *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990) and *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974). Counsel also urges us to consider the petitioner's severe depression stemming from Mr. McDuffie's abuse when making our determination.

Upon full review of the record, we find no reason to question the previous denials of [REDACTED] Form I-130 petitions. We have reviewed the documents submitted with the first Form I-130 as well as the notes from the separate interviews of the petitioner and [REDACTED] which document over 17 discrepancies in their testimony regarding basic facts of their marital relationship and joint residence. Regardless of whether or not the district director erroneously applied section 204(c) to [REDACTED] second Form I-130 petition, the lack of sufficient supporting documentation submitted with that petition supported the district director's determination that the couple was married solely to procure immigration benefits for the petitioner and his consequent denial of the second Form I-130.

The record does not support counsel's intimation that [REDACTED] abuse and the petitioner's resultant depression prevented the proper documentation of their allegedly good faith marriage. In her February 14, 2004 declaration, the petitioner states that her husband became abusive shortly after he lost his job in January 2001. She explains that prior to that time, **their marriage went very well**. In her January 31, 2005 declaration, the petitioner states that due to [REDACTED] abuse and frequent abandonment of their marital home, their immigration interview on January 6, 2000 did not go well, but again states that her husband became abusive after he lost his job, an event she previously stated occurred in January 2001, a year after the couple's immigration interview. On appeal, the petitioner provides no explanation of this discrepancy.

As we discuss in detail below, the petitioner also submits little documentary evidence of the couple's shared assets and liabilities and her own testimony includes no probative detailed description of how she met her husband, their courtship, wedding, shared residence and any shared experiences (apart from [REDACTED] abuse). Accordingly, the evidence submitted with this petition fails to establish the bona fides of the petitioner's marriage to [REDACTED] and provides no basis to question the denial of [REDACTED] Form I-130 petitions or the district director's determination that the marriage was made solely to procure immigration benefits for the petitioner. Consequently, section 204(c)(1) of the Act bars the approval of the instant petition.

Entry into the Marriage in Good Faith

Beyond the director's decision, the record also fails to establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1) 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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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 evidence will be considered.

As evidence of her good faith marriage, the petitioner initially submitted her own declaration; copies of photographs of herself and [REDACTED] at their wedding and on one other occasion, a joint residential lease for [REDACTED] is dated September 1, 1998 and signed by the petitioner and [REDACTED] rent receipts for this residence jointly issued to the petitioner and [REDACTED] for August 1998, November 1999, March 2000, April 2001, July 2002 and May 2003; telephone and electricity bills addressed to [REDACTED] the [REDACTED] unsigned copies of the couple's 2001 and 2002 joint federal income tax returns; a signed copy of the couple's joint 1998 New Jersey income tax return; and bank statements of the couple's joint account dated September 1999, January 2000 and July through September 2000. In response to the director's NOID, the petitioner submitted her January 31, 2005 declaration and a declaration signed [REDACTED] and notarized on February 11, 2005.

These documents fail to establish the petitioner's good faith in marrying [REDACTED]. The photographs show that a wedding took place and that the petitioner and [REDACTED] were together on one other occasion on an unspecified date. The lease, rent receipts and the affidavit of the couple's former landlord, [REDACTED], show that the petitioner resided with [REDACTED] but these documents do not independently establish the petitioner's good faith entry into their marriage. The 2001 and 2002 joint income tax returns are unsigned and were submitted with no evidence that they

were actually filed with the Internal Revenue Service (IRS). The bank statements show that the couple had a joint savings account, but do not indicate when the account was opened and do not document a significant history of joint usage. The July through September 2000 statement shows that the account balance was \$2.85 on July 1, 2000, but was zero on September 30, 2000 and had an average balance of zero during the statement period. The telephone and electricity bills are addressed to [REDACTED] only and do not show that the couple had joint utilities accounts. The couple's 1998 joint New Jersey income tax return alone does not establish the petitioner's good faith marriage to [REDACTED]

The testimony of the petitioner and [REDACTED] also fail to provide probative evidence of the petitioner's good faith entry into their marriage. In her February 14, 2004 declaration, the petitioner states that the couple's marriage "started off very well and we had a lot of fun and enjoyed each other's company tremendously." In her January 31, 2005 declaration, the petitioner states that she met Mr. [REDACTED] on or about November 1997, that [REDACTED] came across as friendly and caring, that they began dating in December 1997, moved into an apartment together and got married "on or about January 26, 1998." The petitioner asserts, "I did not enter my marriage for the purpose of evading immigration laws. I married [REDACTED] because we fell in love with each other." Yet the petitioner does not further discuss how she met [REDACTED], their courtship, wedding, joint residence or any of their shared experiences (apart from [REDACTED] abuse).

Despite the petitioner's assertion that she does not know [REDACTED] whereabouts, she submitted a written declaration made by [REDACTED] and notarized on February 11, 2005. [REDACTED] states, "In the beginning we had a peaceful marriage and things were very pleasant between us." Mr. [REDACTED] asserts, "We both entered into the marriage in good faith and wish things could have worked out, but they didn't." [REDACTED] does not discuss how he met the petitioner, their courtship, wedding, joint residence or any of their shared experiences (apart from their marital disputes).

The documentary evidence fails to demonstrate that the petitioner married [REDACTED] in good faith. We have considered the petitioner's testimony regarding [REDACTED] unemployment, abuse, frequent absences from their marital home and ultimate abandonment. While [REDACTED] alleged actions may explain the lack of further documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), the testimony of the petitioner and [REDACTED] fail to provide detailed and probative evidence of the petitioner's good faith entry into their marriage. The record thus does not establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

The record supports the district director's determination that the petitioner's marriage to [REDACTED] was entered into solely to procure immigration benefits for the petitioner. Consequently, section 204(c)(1) of the Act bars the approval of this petition. Beyond the director's decision, the evidence submitted with this petition also fails to establish that the petitioner entered into marriage with Mr. [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.