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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 22 2006**  
EAC 03 216 50428

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:



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 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 Form I-130 alien relative petition previously filed by the petitioner's husband on her behalf was denied for fraud and the petitioner failed to establish that their marriage was not entered into for the purpose of evading the immigration laws.

On appeal, counsel claimed that the petitioner had a bona fide marriage and stated that she would submit relevant medical records. On the Form I-290B, which counsel dated January 6, 2006, counsel requested 90 days to file a brief and additional evidence. On March 24, 2006, counsel filed an "abbreviated brief" and requested an additional 60 days, until June 9, 2006, to submit further evidence. To date, over four months later, the AAO has received nothing further from counsel or 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 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).

The eligibility requirements are further 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 standard and 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.

Section 204(c) of the Act also applies to this petition and 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who entered the United States without inspection on or about December 1, 1991. On October 3, 1996, the petitioner married J-M-<sup>1</sup>, a U.S. citizen, in New York. On August 9, 2000, the legacy Immigration and Naturalization Service (“the Service”) denied J-M-’s Form I-130, petition for alien relative, filed on the petitioner’s behalf because the Service determined that their marriage was entered into for the sole purpose of circumventing the immigration laws. On September 4, 2002, the Service denied the petitioner’s related Form I-485, application to adjust status, and served the petitioner with a Notice to Appear for removal proceedings, which charged the petitioner as removable pursuant to section 212(a)(6)(A)(i) of the Act because she was present in the United States without having been admitted or paroled. On December 20, 2005, the Boston Immigration Court granted the petitioner voluntary departure in lieu of removal on or before February 18, 2006.

On August 13, 2003, the petitioner filed this Form I-360. On August 4, 2004, the director issued a Notice of Intent to Deny (NOID) the petition pursuant to section 204(c) of the Act. The petitioner, through counsel, timely responded. On February 3, 2005, the director issued a second NOID and

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

requested the petitioner to submit evidence that her marriage was not entered into for the purpose of evading the immigration laws and other testimonial and documentary evidence of the bona fides of her marriage. The petitioner, through counsel, requested and was granted two extensions of time to respond to the February 3, 2005 NOID. However, counsel submitted no response and the director denied the petition on December 12, 2005.

On appeal, counsel reasserts his claim that the petitioner's marriage was bona fide, but fails to submit the allegedly relevant evidence cited in his appellate correspondence. We concur with the director's determination that section 204(c) of the Act bars the approval of this petition. Beyond the director's decision, the record also fails to establish that the petitioner entered her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Counsel's unsupported assertions on appeal do not overcome these grounds for denial.

*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). 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 marriage was entered into for the purpose of evading the immigration laws and we are consequently barred from approving her petition pursuant to section 204(c) of the Act. On December 28, 1999, the Service issued a NOID for the Form I-130

petition filed by the petitioner's husband on her behalf. The NOID stated that during an interview under oath, the petitioner's husband stated that she returned to the Dominican Republic in May 1999 to visit her mother and her son. In fact, the petitioner visited the Dominican Republic from January 2 to January 28, 1999 to visit her father. With her request for advance parole to make this visit, the petitioner submitted a letter from her father's doctor stating that her father suffered from three serious medical conditions, including a cerebral hemorrhage. Despite this evidence, the petitioner's husband did not mention her father or his health problems. The petitioner's husband also did not know her father's first name. The NOID further stated that Service records showed that the petitioner's husband was arrested on November 27, 1998 and charged with domestic assault against another woman identified as his spouse.

In response to the NOID issued in connection with the Form I-130 petition, counsel stated that the response of the petitioner's husband to the question regarding his wife's visit to the Dominican Republic was not germane to the issue of their bona fide marriage and that the petitioner's husband simply answered the question to the best of his recollection. Counsel further stated that the petitioner's husband denied ever stating to the police that he was married to another woman. Finally, counsel claimed that the evidence submitted with the Form I-130 petition was sufficient to establish the bona fides of the couple's marriage.

With the Form I-130 petition, the petitioner and her husband submitted evidence of a joint banking account opened on September 19, 1997; a joint 1996 federal income tax return signed by the couple on October 12, 1997; the petitioner's application for life insurance for her husband dated November 13, 1997 and an apparently corresponding life insurance policy statement also dated November 13, 1997. As noted by the interviewing officer, all of these documents were obtained shortly before the former couple's immigration interview on November 19, 1997, over a year after they were married.

The Form I-130 was denied and the appeal of the petitioner's husband was dismissed by the Board of Immigration Appeals on December 5, 2003 for lack of jurisdiction because the Notice of Appeal filed by counsel was not signed by the petitioner or accompanied by a Notice of Entry of Appearance as Attorney before the Board.

We have reviewed the notes from the interviews of the petitioner and her husband in connection with the Form I-130 petition. The officer's notes show that the petitioner's husband incorrectly stated the date and purpose of her trip to the Dominican Republic, that he did not mention that the petitioner's father was ill and that he did not know the first name of the petitioner's father. Service records also contain evidence that the petitioner's husband was arrested on November 27, 1998 by the Providence Police Department and charged with domestic assault. The records list the petitioner's husband's marital status as "single," but also identify another woman as his spouse.

With this Form I-360, the petitioner submitted an affidavit in which she states that her marriage "was bonafide," but that her husband became abusive and they separated in 1998. The petitioner states that after their separation, she learned that she was pregnant with her husband's child, but that she

had a miscarriage in December 2000. The petitioner explains that she reconciled with her husband, but then filed assault charges against him and the couple was again separated. The petitioner provides no further, probative information regarding how she met her husband, their courtship, wedding or any of their shared experiences.

The petitioner submitted an unsigned copy of the former couple's joint 1998 federal income tax return, but the form is dated January 10, 2000 and it is unclear if the return was filed before or after the couple separated because on the Form I-360, the petitioner states that she lived with her husband until an unspecified date in 2000. The petitioner also submitted four notices or statements from the Internal Revenue Service dated between December 22, 1997 and April 22, 1998 jointly addressed to the petitioner and her husband regarding payments for their 1996 taxes; a bill for furniture jointly addressed to the petitioner and her husband, but signed only by the petitioner and noting payments made from October 1, 1996 to June 9, 1997; and three joint bank account statements dating from August 20, 1999 to November 18, 1999. These documents fail to demonstrate a commingling of assets and liabilities between the petitioner and her husband over the course of their marriage and prior to their separation.

In response to the August 4, 2004 NOID, the petitioner submitted a second affidavit dated September 30, 2004, in which she explains that her husband was arrested for assault after they were separated and that the woman identified as his spouse was actually his girlfriend. The petitioner states, "the use of the word spouse is common in the Dominican culture. That the simple fact that a couple refers to the relationship-partner as spouse does not mean the parties are legally married. The term is used loosely and meant to suggest that the parties are a couple." The petitioner reasserts that her marriage "is and was at all times material hereto bonafide," but she provides no further details or probative information regarding her marital relationship, as specified in the February 3, 2005 NOID.

The petitioner failed to respond to the February 3, 2005 NOID and counsel provides no explanation for this failure on appeal. On appeal, the petitioner submits a medical referral form for the petitioner dated December 12, 2000 from the New York Presbyterian Hospital, which states that the petitioner received a positive pregnancy test and that her expected date of delivery was August 4, 2001. However, the petitioner submitted no evidence of her purported miscarriage or other evidence that the pregnancy resulted from her relationship with her husband.

Upon full review of the record, we find that the District Director correctly denied the Form I-130 petition because the evidence and testimony showed that the petitioner's marriage was entered into for the purpose of circumventing the immigration laws. We also concur with the director's determination that the documentary evidence and the petitioner's statements submitted with this petition fail to establish that her marriage was not entered into for the purpose of evading the immigration laws. Counsel's claims and the evidence submitted on appeal do not overcome the director's determination that section 204(c)(1) of the Act bars the approval of the instant petition. Beyond the director's decision, the record also fails to establish that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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).

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.