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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

APR 03 2009

EAC 04 131 53404

IN RE:

[REDACTED]

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)

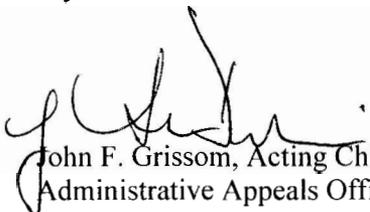
ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director initially approved the immigrant visa petition. Upon review of the petition, the director issued a notice of intent to revoke, and did ultimately revoke, approval of the petition. 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 on the basis of his determination that the petitioner had failed to establish that she had complied with section 204(c) of the Act, 8 U.S.C. § 1154(c).

Counsel submitted a timely appeal on October 16, 2007.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act. . . .

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an

act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

* * *

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal

background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner is a citizen of Jamaica. She married M-F-¹ a citizen of the United States, on June 13, 2001. M-F- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on October 17, 2001, and the petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner filed the instant Form I-360 on March 24, 2004, and it was approved on January 27, 2005. Although the petitioner stated on both the Form I-360 and in an August 16, 2006 interview in connection with her Form I-485 that her marriage to M-F- was her first marriage, USCIS records establish that the petitioner filed Forms I-130 and I-485, based upon marriage to A-T-² a citizen of the United States, on May 18, 1995. As the record indicated that the petitioner had misrepresented her previous marital status, the director issued a notice of intent to revoke (NOIR) approval of the petition on April 6, 2007.

In his NOIR, the director notified the petitioner of the deficiencies of record and afforded her the opportunity to submit additional evidence to establish that she has complied with section 204(c) of the Act, and that she was subjected to battery and/or extreme cruelty by M-F-. The petitioner responded on June 6, 2007, and submitted additional evidence. The director found the petitioner's submission sufficient with regard to the battery and/or extreme cruelty endured by the petitioner, but on October 3, 2007 nonetheless revoked approval of the petition on the basis of his determination that the petitioner had failed to establish compliance with section 204(c) of the Act.

On appeal, the petitioner submits a brief.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

Section 204(c) of the Act

As was noted previously, the petitioner stated on the Form I-360 and in an August 16, 2006 interview in connection with her Form I-485 that her marriage to M-F- is her first marriage. However, the record establishes that A-T- filed a Form I-130 on behalf of the petitioner on May 18, 1995, and the petitioner filed a Form I-485 that same day.³ On that Form I-485, the petitioner stated that she was married to A-T-, and on her form G-325A she stated that she had married him on March 23, 1995. The petitioner also submitted a marriage certificate from the City of New York, which confirmed that she had married A-T- on March 23, 1995. The AAO notes that the Form I-485 states the following immediately above the signature line:

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. . . .

The petitioner agreed to this statement on May 2, 1995, the date on which she signed the Form I-485.

In her June 1, 2007 response to the director's NOIR, previous counsel stated that the petitioner did not notify USCIS of her previous marriage because there had in fact never been a previous marriage. Previous counsel also stated that her office had requested that the City of New York search its index of marriage records for the purported marriage between the petitioner and A-T-, and that the search had revealed that no such marriage had ever taken place. Previous counsel submitted a May 30, 2003 letter from the City of New York's Office of the City clerk stating that it had no record of a marriage between the petitioner and A-T-.

Previous counsel also submitted an affidavit from the petitioner in response to the director's NOIR. In her May 3, 2007 affidavit, the petitioner stated that she was never married to A-T-; that she had never known anyone named A-T-; and that she does not know if A-T- even exists. The petitioner stated that, in 1995, a friend suggested that she meet with the pastor of the Church of God in Brooklyn because that church would sponsor her "green card." According to the petitioner, the pastor told her that he could help her obtain a "green card" through the church, took copies of her birth certificate and passport, and told her to trust him. She stated that she did not realize she was doing anything wrong; repeated her assertion that she have never known anyone named A-T- and that she never married him. The petitioner asserts that the alleged marriage must have been linked to the pastor; that she never tried to defraud USCIS; and that she was an innocent victim who had mistakenly believed the pastor when he told her that he could help her.

In his October 3, 2007 notice of revocation, the director found that the petitioner had established that the marriage between the petitioner and A-T- never took place. However, the director found that, although the petitioner had never married A-T- she had, nonetheless, still sought to gain an

³ The Forms I-130 and I-485 were both denied on July 18, 1996 on the basis of the petitioner's failure to appear for a scheduled interview.

immigration benefit from a fictitious marriage. The director noted further that the petitioner had signed the Form I-485 using not only her own, but also A-T-'s, last name. Accordingly, the director found that the petitioner had failed to establish compliance with section 204(c) of the Act, and revoked approval of the petition on that basis.

In her November 15, 2007 appellate brief, current counsel argues that approval of the petition should not have been revoked. Counsel contends that the petitioner met with the pastor in 1995 and that, although he never explained the process by which he was going to obtain the petitioner's "green card," the petitioner trusted him because of the reference of a friend from her church. Counsel contends that, although the "marriage" between the petitioner and A-T- was fraudulent, it was the pastor, and not the petitioner, who committed the fraud. Counsel emphasizes that it was not the petitioner who committed the fraud.

Before undertaking its analysis of this case, the AAO will first explore the language of section 204(c) of the Act, 8 U.S.C. § 1154(c), the statute at issue here. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part, the following:

- (c) [P]rohibition against approval in cases of marriages entered into in order to evade immigration laws. . . .

[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 . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states the following:

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 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).

The director found the evidence of record sufficient to establish that the petitioner was in fact never married to A-T-, and the AAO agrees. However, as noted by the director, the record nonetheless demonstrates that section 204(c) of the Act bars approval of the petition.

As set forth above, section 204(c)(i) of the Act requires a finding that the petitioner was accorded, or sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States via a marriage found to have been *entered into* for the purpose of evading the immigration laws. There was never a marriage between A-T- and the petitioner. They never entered into a marriage for any purpose, let alone for the purpose of evading the immigration laws, so the petitioner cannot be found to have gained benefits (or to have sought such benefits) as a result of such a marriage. Accordingly, section 204(c)(1) of the Act does not apply to this case.

However, as set forth above, section 204(c)(2) of the Act requires a finding that the petitioner attempted to enter, or conspired to enter, into marriage for the purpose of evading the immigration laws. Here, the record of proceeding establishes that the petitioner conspired to enter into marriage with A-T-. She signed and filed the Form I-485 as the spouse of A-T-, used A-T-'s last name on the form and, according to her own testimony, appeared for an interview for her employment authorization on the basis of her claimed marriage to A-T-. The record establishes that she conspired to enter into a marriage for the purpose of evading the immigration laws. Accordingly, section 204(c)(2) of the Act bars approval of this petition.

Good Moral Character

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason, as the petitioner has failed to establish that she is a person of good moral character. The AAO finds that the behavior of the petitioner in 1995 precludes such a finding. On the Form I-290B, Notice of Appeal or Motion, counsel stated the following:

[T]he Pastor who was supposed to help [the petitioner] had her sign forms, apparently without being completely filled out. This pastor appears to be a scam artist, who had the forms partially completed with her basic information, when she signed. [The petitioner] should not be penalized for what someone filled out on her behalf as she was unaware that her application was based on a marriage to [A-T-].

The AAO rejects counsel's assertion. The petitioner is responsible for the forms she filed, as she does not dispute that she signed the Forms I-485 and G-325A that she claims were placed before her by the pastor. She should not have signed them if they were not filled out completely. There is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). The petitioner is responsible for the fraudulent filing. Moreover, there is no evidence that she was assisted by the pastor she references, as the petitioner indicated on the Form I-485 that was not being represented. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a self-petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place where the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Yet the regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of USCIS's inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (March 26, 1996). Here, the petitioner's fraudulent filing of a Form I-485, based upon a non-existent marriage, is ample reason for USCIS to believe that the petitioner lacked good moral character beyond the three-year period preceding the filing of this petition.

As noted previously, 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, that “[a] self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act.” Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, the following:

(f) For the purposes of this chapter--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter. . . .

* * *

The fact that any person is not within any of the forgoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

The petitioner clearly gave false testimony for the purpose of obtaining immigration benefits on the Form I-485 she submitted on May 18, 1995. Section 101(f)(6) of the Act, therefore, prohibits the AAO from making a determination that the petitioner is a person of good moral character. She filed a Form I-485 based upon a fraudulent marriage, and submitted a false marriage certificate. Even if the petitioner were to submit documentary evidence to demonstrate that it was the pastor, and not the petitioner, who made false assertions, there is remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. *See* 8 C.F.R. § 292.1. Even if the petitioner were to submit evidence that she was in fact assisted by the pastor in filing the Form I-485 in 1995, any false assertions that were made by the pastor would be imputed to the petitioner, as she admits to signing the forms.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), indicates that even if the petitioner is not in any of the classes listed, USCIS is not precluded from finding the petitioner lacks good moral character. Similarly, section 204.2(c)(1)(vii) states, in pertinent part, the following:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character.

The AAO, therefore, finds further that, as a matter of discretion exercised under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), the petitioner has failed to establish that she is a person of good moral character. Again, the petitioner filed a Form I-485 based upon a fraudulent marriage, and submitted a false marriage certificate. Even if the AAO were not required to impute any alleged fraudulent misrepresentations made by the pastor to the petitioner, the petitioner would still be found to lack good moral character, as she has failed to submit any evidence that she was in fact assisted in filing the Form I-485.

The present record, therefore, fails to establish that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. For this additional reason, the petition may not be approved.

Conclusion

The AAO agrees with the director's finding that section 204(c) of the Act bars approval of this petition. Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that she is a person of good moral character. For all of these reasons, the AAO will not disturb the director's denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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