

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

B3

FILE: [REDACTED]
EAC 03 213 53923

Office: VERMONT SERVICE CENTER

Date: JAN 07 2009

IN RE: Petitioner: [REDACTED]

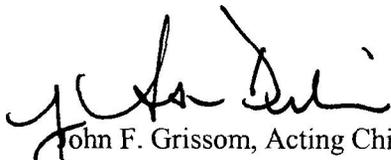
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 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 because the petitioner did not establish that her spouse subjected her to battery or extreme cruelty and that she was a person of good moral character. In addition, the director determined that the petitioner had failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to her attempt to enter into a prior marriage for the purpose of evading the immigration laws.

On appeal, the petitioner submits a handwritten statement, a typewritten brief and copies of documents previously submitted.

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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but

that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(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 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, 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.

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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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. . . . 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Ivory Coast who entered the United States (U.S.) on March 3, 2000 as a nonimmigrant visitor (B-2). On January 8, 2001, the petitioner married K-G-¹, a U.S. citizen. K-G- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which he withdrew on June 17, 2003. On August 6, 2003, the Houston District Office acknowledged the withdrawal of the Form I-130 petition and denied the petitioner's related Form I-485, Application to Adjust Status. The petitioner's marriage to K-G- was declared void on August 27, 2001.²

On September 1, 2001, the petitioner married M-M-³, a U.S. citizen, who subsequently filed a Form I-130 petition on the petitioner's behalf. On July 26, 2004, the Houston District Office issued a Notice of Intent to Deny (NOID) the Form I-130 petition pursuant to section 204(c) of the Act because United States Citizenship and Immigration Services (USCIS) records showed that the petitioner's prior marriage to K-G- was entered into for the purpose of evading the immigration laws. M-M- did not respond to the NOID and the Form I-130 petition was denied due to abandonment.

The petitioner filed this Form I-360 on July 14, 2003 based on her relationship with M-M-. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, proof of the termination of the petitioner's prior marriage to K-G- and evidence that M-M- had subjected her to battery or extreme cruelty. The petitioner, through counsel, responded with further documentation. On July 20, 2006, the director issued a NOID explaining that the petition would be denied for failure to establish the requisite battery or extreme cruelty, the petitioner's good moral character and pursuant to section 204(c) of the Act in regards to the petitioner's prior relationship with K-G-. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. On November 22, 2006, the director denied the petition on the grounds cited in the NOID and the petitioner timely appealed.

On appeal, the petitioner briefly describes her two marriages and asserts her eligibility. We concur with the director's determination that the petitioner failed to establish the requisite good moral character, battery or extreme cruelty and that approval of the petition is barred under section 204(c) of the Act.

¹ Name withheld to protect individual's identity.

² District Court of Harris County, Texas, 308th Judicial District, Cause No. [REDACTED]

³ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

In her August 4, 2004 letter, the petitioner states that her “husband’s personalities [sic] suddenly changed from being loving and caring to a tormentor and a batterer with extreme tendencies.” The petitioner explains that she suffered from severe depression, fatigue, loss of sleep and appetite, social isolation, extreme nervousness and feelings of helplessness. The petitioner does not describe any particular incidents of abuse in detail and explains that her memories of her marriage “are too traumatic and hurtful” to discuss further. On appeal, the petitioner states that not long after their marriage, M-M-began beating her up and abusing her sexually while she did everything at home and paid all the bills. The petitioner does not describe any specific incidents of abuse in detail.

The petitioner submitted a February 11, 2003 letter from the Houston Area Women’s Center (HAWC), which states that the petitioner has been a client of HAWC since January 7, 2003, but provides no further information regarding the petitioner’s circumstances or the services provided to her.

The petitioner also submitted four documents from the Houston Police Department regarding an incident on December 25, 2002. The Offense Report lists the offense as “assault (contact) (fv) domestic violence” and lists the petitioner’s marital address. The report states “The comp[lainant] stated that listed suspect assaulted her. 1 suspect/no arrest.” However, the report does not identify the suspect or otherwise identify the assailant as the petitioner’s husband. A December 27, 2002 letter from the Family Violence Unit of the Houston Police Department addressed to the petitioner states that the Unit has “received information which suggests that you may have been a recent victim of domestic violence and may require help.” The letter references Incident Number [REDACTED] and is accompanied by a copy of a card from the Houston Police Department with the same incident number. The card lists “assault (f.v.),” the petitioner’s marital address and the date of December 25, 2002. The card was submitted with a copy of a document entitled “Texas Crime Victim Rights,” on which the telephone number of “Aid to Victims of Domestic Abuse” is circled.

While the documents from the Houston Police Department indicate that the petitioner reported an assault on December 25, 2002, none of the documents identify the petitioner’s husband as the perpetrator of the offense or provide any detailed description of the incident or its impact on the petitioner through, for example, physical injury, emotional distress or other harm. The petitioner fails to describe the December 25, 2002 incident in any of her testimony submitted below. On appeal, the petitioner states, “Indeed only one police report was filed, and other abuses went unreported.” Yet the petitioner fails to describe any incident of abuse in probative detail.

The petitioner submitted no other evidence of battery or extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and in the RFE. Although the petitioner states on appeal that she was embarrassed and ashamed to talk to anyone about the abuse, she fails to provide her own substantive testimony describing her husband’s alleged battery and extreme cruelty in probative detail. The letter from HAWC and the documents from the Houston Police Department do not

identify the petitioner's husband as her abuser or provide any probative information regarding the alleged battery and extreme cruelty. Accordingly, the petitioner has failed to establish that M-M-subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner submitted an "Affidavit of Good Moral Character" and a letter from the New Jersey Office of the Attorney General stating that she had no criminal record in the files of the New Jersey State Police based on a search of her fingerprints. In the NOID, the director notified the petitioner that this evidence was insufficient to establish her good moral character because she had previously lived in Houston, Texas, but did not provide evidence of her good moral character from that location. The petitioner failed to provide the requisite evidence from Texas in response to the NOID. In her appellate brief, the petitioner states, "I did not know that New Jersey alone would not be enough to prove good moral character. I have lived in New Jersey for a year and going back to Texas would only revive bad memories. Texas is the state that I went through two failed marriages and lost everything I had owned through Hurricane Rita."

To establish good moral character, the regulation requires 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." 8 C.F.R. § 204.2(c)(2)(v). The record shows that the petitioner resided in Houston, Texas for over three years and was residing in that city at the time this petition was filed. While the regulation permits the submission of other evidence of good moral character if police clearances or criminal background checks are unavailable for certain locations, the petitioner has not sufficiently explained why a local police clearance letter from the Houston Police Department or a Texas criminal background check is not available or provided other credible evidence of her good moral character during her residence in Texas. Although the petitioner states that she lost her belongings during Hurricane Rita, she does not explain why she could not contact the Houston Police Department or the appropriate state criminal record bureau in Texas to obtain the requisite clearance, nor does she explain her inability to obtain affidavits from individuals in Texas who could attest to her good moral character.

Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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.

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). 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).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). 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. *Id.* at 387.

The record contains evidence that K-G- committed bigamy when he married the petitioner and that he filed Form I-130 petitions for the petitioner and at least one of the four other women he married. In the NOID, the director noted that the petitioner was subject to section 204(c) of the Act because USCIS records and the prior denial of K-G-'s Form I-130 petition filed on the petitioner's behalf indicated that their marriage was entered into for the purpose of evading the immigration laws. Accordingly, the director specifically requested documentation that the petitioner married K-G- in good faith. The petitioner submitted no relevant evidence in response to the NOID. On appeal, the petitioner only briefly describes her first marriage:

I met [K-G-], my first husband, we got married in 2001. He seemed charming. It was the happiest time of my life. In my tradition, girls get married when they are 18 years. I was afraid that I was getting old and so when the opportunity to get married to [K-G-] presented itself, I was happy. [K-G-] suggested that we put my petition through, [but] my marriage to [K-G-] was short lived because three weeks later, a friend informed me that [K-G-] was still married to someone else. Immediately, I went to my lawyer and advised him to withdraw the petition and initiate an annulment proceeding. "I did was Right." Six months later the marriage was annulled.

The record does not fully support the petitioner's explanation. Although the petitioner's marriage was declared void due to K-G-'s bigamy six months after their marriage in 2001, counsel did not submit K-G-'s request to withdraw the Form I-130 petition until June 17, 2003. In that letter, counsel stated that the petitioner and K-G- had divorced, that she had remarried and that a new Form I-130 petition had been filed on her behalf. Indeed, the record shows that the petitioner married her second spouse, M-M-, just five days after her marriage to K-G- was terminated.

The petitioner provided no documentation of her good-faith entry into marriage with K-G- and no such materials were submitted with K-G-'s Form I-130 petition. On appeal, the petitioner states that she lost everything she owned in Texas due to Hurricane Rita, but she does not provide any explanation of her inability to obtain further evidence from third parties regarding her good-faith entry into marriage with K-G-. The petitioner provides no detailed testimony of her own or from other individuals regarding how she met K-G-, their courtship, wedding, shared residence and experiences.

We acknowledge that failure to produce affirmative evidence of the bona fides of a marriage, by itself, is not sufficient to establish that the marriage is fraudulent pursuant to section 204(c) of the Act. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B) *with* 8 C.F.R. § 204.2(a)(1)(ii). However, in this case, the record shows that the petitioner's first husband committed bigamy and filed Form I-130 spousal petitions for the petitioner and at least one of his four other wives. The record further shows that the Form I-130 petition filed by K-G- on the petitioner's behalf was not withdrawn until after the petitioner had married M-M-, just five days after her marriage to K-G- was terminated, and M-M- had filed a Form I-130 petition on her behalf. This evidence combined with the petitioner's failure to provide documentation or probative testimony of the bona fides of her first marriage indicates that the petitioner's marriage to K-G- was entered into for the purpose of evading the immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

The record fails to establish that the petitioner was subjected to battery or extreme cruelty by her second spouse and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied. Approval of this petition is further 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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.