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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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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 07 2010

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:

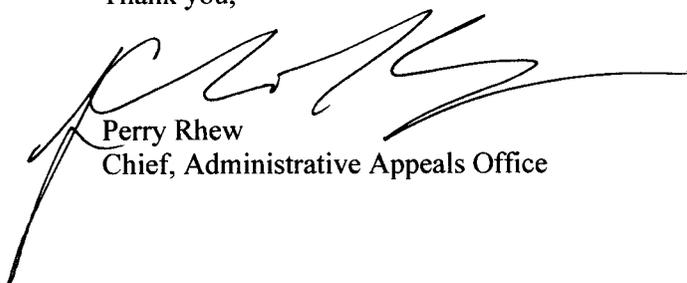
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center 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 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 citizen of the United States.

The director denied the petition on the basis of his determination that section 204(c) of the Act, 8 U.S.C. § 1154(c), bars approval of this petition. Counsel filed a timely appeal on March 13, 2009. On appeal, counsel submits a brief and copies of several previously-submitted documents.

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

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.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part, the following:

[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 [Secretary of Homeland Security] to have been entered into 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)(1)(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.

The record in this case establishes the following pertinent facts and procedural history. The petitioner is a citizen of Morocco. He entered the United States in B-2 visitor status on October 17, 1998. He married B-S-¹ a citizen of the United States, on January 6, 1999. According to their subsequent divorce judgment,² the petitioner and B-S- separated on or about March 28, 1999. B-S- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner on April 7, 1999. B-S- and the petitioner divorced on December 15, 1999, and the Form I-130 was denied on October 17, 2000.

The petitioner married E-H-³ a citizen of the United States, on September 12, 2000. E-H- filed a Form I-130 on behalf of the petitioner on May 15, 2001. Although the Form I-130 was approved on September 22, 2005, that approval was revoked on March 6, 2007.

The petitioner filed the instant Form I-360 on May 4, 2007. The director issued a subsequent request for additional evidence, and then a notice of intent to deny (NOID) the petition, to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the

¹ Name withheld to protect individual's identity.

² See Amended Decree of Dissolution of Marriage, Vanderburgh Superior Court Division IV, Cause No. [REDACTED] filed December 23, 1999.

³ Name withheld to protect individual's identity.

petitioner's responses to his request for additional evidence and NOID, the director denied the petition on February 9, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denial of the petition.

Section 204(c) of the Act Bars Approval of the Petition

The AAO agrees with the director's determination that section 204(c) of the Act bars approval of this petition. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) requires the self-petitioner to comply with section 204(c) of the Act in order to establish eligibility for immigrant classification as the abused spouse of a U.S. citizen. The petitioner has not demonstrated such compliance.

The petitioner married B-S- on January 6, 1999, which was 91 days after his entry into the United States. B-S- filed the Form I-130 on his behalf after the couple's March 28, 1999 separation. B-S- filed for divorce on July 27, 1999. In its October 17, 2000 decision denying the Form I-130 filed by B-S-, the legacy Immigration and Naturalization Service found that the marriage "was entered into in order to evade the immigration laws of the United States."

Although U.S. Citizenship and Immigration Services (USCIS) initially approved the Form I-130 filed by E-H- on behalf of the petitioner on September 22, 2005, a notice of intent to revoke (NOIR) that petition was issued on January 15, 2007. In that NOIR, USCIS notified E-H- of its intention to revoke approval of the Form I-130 she had filed, pursuant to section 204(c) of the Act, based upon its determination that the petitioner and B-S- had entered into marriage for the purpose of circumventing the immigration laws of the United States. No response was received and, as such, approval of the Form I-130 was revoked on March 6, 2007.

In his February 25, 2008 NOID regarding the instant Form I-360, the director noted, *inter alia*, that because two Forms I-130 filed on behalf of the petitioner had been denied under section 204(c) of the Act, the petitioner had failed to establish that he was in compliance with section 204(c) of the Act, and had therefore not established his eligibility for immigrant classification. The petitioner was afforded 33 days during which to establish that he had not entered into his marriage with E-H- for the purpose of circumventing the immigration laws of the United States.

In his March 27, 2008 response to the director's NOID, counsel, looking to the initial September 22, 2005 approval of the Form I-130 filed by E-H- on behalf of the petitioner, erroneously claimed that the petition had not been denied. However, as noted by the director, approval of that Form I-130 was revoked on March 6, 2007. As counsel submitted no evidence to establish that the petitioner did not marry B-S- to evade the immigration laws, the director denied the Form I-360 petition pursuant to section 204(c) of the Act.

On appeal, counsel argues that “the issue of a sham marriage was resolved in 2005 with the reversal at the [Board of Immigration Appeals].” The record contains no evidence of a decision issued by the BIA on E-H-’s appeal of a denial of her Form I-130. Even if the BIA had initially upheld the bonafides of the petitioner’s marriage to B-S- within a decision on E-H-’s Form I-130, the record shows that USCIS issued a NOIR regarding E-H-’s petition on January 15, 2007, and ultimately revoked approval of the Form I-130 petition pursuant to section 204(c) of the Act, on March 6, 2007. The record further shows that E-H- withdrew her subsequent appeal before the BIA on July 10, 2007.

Counsel also asserts on appeal that the petitioner’s marriage to B-S- “was not a sham due to the documentation submitted in the past.” Counsel’s assertion, however, is not supported by the record. As noted previously, the evidence submitted in support of the Form I-130 that B-S- filed on behalf of the petitioner in 1999 was found insufficient, as the legacy INS denied that petition on October 17, 2000, and made a specific finding that “the marriage was entered into in order to evade the immigration laws of the United States.”

Upon review of the entire record, the AAO agrees with the director’s determination that section 204(c) of the Act bars approval of this petition. 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).

Although counsel claims on appeal that the petitioner and B-S- resided together, commingled financial resources, went on vacation together, and attended several parties together, the record indicates that the petitioner entered into the marriage for the purpose of circumventing the immigration laws of the United States. The petitioner married B-S- 91 days after entering the United States as a nonimmigrant visitor and they separated two and a half months later. The Form I-130 was filed after the couple separated. At the time the Form I-130 was filed, no evidence was submitted indicating that the petitioner and B-S- had any shared financial or other marital responsibilities. The evidence of record regarding the petitioner’s good faith entry into the marriage consists solely of the petitioner’s testimony and photocopies of photographs of the petitioner and B-S- together. The photographs are not evidence of the petitioner’s good faith entry into marriage with B-S-, as they prove only that the petitioner and B-S- were pictured together at their wedding and on a few other, unidentified occasions.

In his April 20, 2004 statement, the petitioner stated that he met B-S- in November 1998 in Florida, where he was living, when B-S- was vacationing in the area with friends and family. He stated that B-S- returned to Florida in December 1998, and told him that she was "looking for a man." They started dating and, two weeks later, he moved with her to Indiana. He stated that they began living together on December 21, 1998. The record indicates that they were issued a marriage license one week later in Henderson County, Kentucky on December 28, 1998, and that they were married on January 6, 1999. The petitioner stated that he left in May 1999. In his November 2, 2007 and March 20, 2008 statements, however, the petitioner stated that he and his wife separated on March 28, 1999. These latter statements are inconsistent with the petitioner's earlier assertion that he and B-S- separated in May 1999.

Upon review of the entire record, the AAO finds that approval of this petition is barred by section 204(c) of the Act. Two Forms I-130 filed on behalf of the petitioner have been denied – one in 2000, one in 2007 – based upon separate USCIS determinations that the petitioner entered into his 1999 marriage with B-S- in order to circumvent the immigration laws of the United States. The record contains no documentary evidence regarding shared financial commitments, assets, or other responsibilities between the petitioner and B-S-. The petitioner's brief statements regarding his marriage to B-S- lack meaningful detail and substantive information regarding the couple's courtship, marriage, joint assets and liabilities or any of their shared experiences. Moreover, the petitioner's testimony is inconsistent with regard to the length of his marriage to B-S-, which diminishes the probative value of his testimony. Although the photographs indicate the petitioner and B-S- were pictured together on a few occasions, the photographs are not, in and of themselves, evidence that the petitioner entered into the marriage in good faith. The AAO finds the evidence of record to indicate that the petitioner entered into marriage with B-S- for the primary purpose of circumventing the immigration laws of the United States.

Independent review of the record indicates that the petitioner married B-S- for the purpose of evading the immigration laws. Consequently, the AAO agrees with the director's determination that section 204(c) of the Act bars the approval of the instant petition.

Ineligibility for Immediate Relative Classification

Section 204(a)(1)(A)(iii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility for immediate relative classification based on his or her relationship to the U.S. citizen abuser. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explicates that such eligibility requires the self-petitioner to comply with, *inter alia*, section 204(c) of the Act. As discussed above, the petitioner here has failed to comply with section 204(c) of the Act. He is consequently ineligible for immediate relative classification based on his marriage to E-H- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for that reason.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he did not enter into his previous marriage for the primary purpose of circumventing the immigration laws of the United States. The AAO, therefore, concludes that section 204(c) of the Act mandates denial of this petition. As the petitioner has not complied with section 204(c) of the Act, he is ineligible for immediate relative classification based upon his marriage to E-H-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this additional reason, 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. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.