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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  
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Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

SEP 10 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:

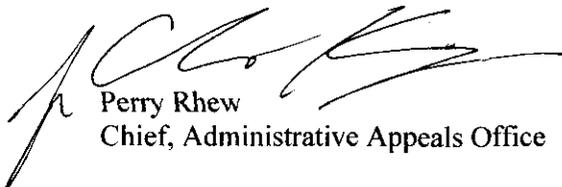
SELF-REPRESENTED

**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 Immigration and Nationality Act (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. On appeal, the petitioner submits additional testimonial evidence.

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, 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)(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 Trinidad. He entered the United States in B-2 visitor status on December 8, 2000. He married M-C-,<sup>1</sup> a citizen of the United States, on August 7, 2006.

The petitioner filed the instant Form I-360 on June 4, 2007. The director issued a subsequent request for additional evidence, to which the petitioner filed a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on September 15, 2008. On October 16, 2008, the petitioner filed a motion to reopen and reconsider, which the director granted. On December 10, 2008, the director affirmed his decision to deny the petition. On January 9, 2009, the petitioner filed a motion to reconsider that decision, which the director also granted. Upon reconsideration, the director issued a notice of intent to deny (NOID) the petition on February 19, 2010, and the petitioner filed a timely response. After considering the

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

evidence of record, including the petitioner's response to the NOID, the director again affirmed the denial of the petition on April 28, 2010. The petitioner filed a timely appeal on June 1, 2010.

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 ground 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, and the petitioner has not demonstrated such compliance.

The petitioner stated on the Form I-360 that he had been married twice, including his marriage to M-C- and, at the time he filed the petition, the petitioner submitted a copy of the divorce judgment from his previous marriage, which indicated that he and his previous wife, D-B-,<sup>2</sup> divorced on December 16, 2005. The petitioner made no mention of any other marriages. However, U.S. Citizenship and Immigration Services (USCIS) records establish that on December 1, 2004 the petitioner filed a Form I-485,<sup>3</sup> Application to Register Permanent Residence or Adjust Status, based upon his marriage to K-E-,<sup>4</sup> a citizen of the United States,. When he filed that Form I-485, the petitioner submitted a copy of a marriage certificate which stated that he and K-E- had married on April 20, 2002.

In his May 12, 2008 request for additional evidence, the director requested, among other items, proof of the termination of the petitioner's marriage to K-E-. In his response, the petitioner, did not address his relationship to K-E- and the petition was denied on September 15, 2008. In his motion to reopen or reconsider, the petitioner submitted a September 23, 2008 letter from [REDACTED], the town clerk of [REDACTED] who stated that he had found no record of a marriage between the petitioner and K-E-.

The director affirmed his decision denying the petition on December 10, 2008. In that decision, the director stated that Mr. [REDACTED]'s letter did not overcome the marriage certificate issued by the Town of [REDACTED] that the petitioner had submitted in connection with the Form I-485 he filed based on his marriage to K-E-, and did not establish that he and K-E- had never been married. The director found that because the marriage certificate indicated that the petitioner and K-E- married on April 20, 2002, and the petitioner's divorce from D-B- was not final until December 16, 2005, and the divorce judgment indicated that the petitioner and D-B- had children together in 1989 and 1993, the petitioner's marriage to K-E- had been a bigamous marriage entered into for the purpose of obtaining immigration benefits.

<sup>2</sup> Name withheld to protect individual's identity.

<sup>3</sup> *See* Form I-485, MSC 05 064 16248, filed December 1, 2004 and denied April 27, 2005.

<sup>4</sup> Name withheld to protect individual's identity.

In his second motion, the petitioner stated that he had “now come to the realization of what may have happened.” The petitioner stated that in October 2001, he sought the services of [REDACTED] for assistance in becoming a lawful permanent resident of the United States. He asserted that although he signed many forms he did not read them properly, and did not know that his application for permanent residence would be filed based on a fraudulent marriage. According to the petitioner, [REDACTED] was shut down after authorities discovered it had been perpetrating fraud on the government. The petitioner also submitted additional documentary evidence to establish that he and K-E- were never married.

The director granted the petitioner’s second motion to reconsider. On February 19, 2010, the director issued a NOID, in which he stated that the petitioner had failed to submit any evidence regarding the fraudulent activities of [REDACTED], and that the petitioner’s claimed lack of knowledge regarding the filing of the Form I-485 did not overcome the fact that he had nonetheless attempted to obtain an immigration benefit based upon a relationship with K-E-. In response to the NOID, the petitioner submitted printouts of news articles regarding the fraudulent activities of HPPS, stated again that he was never married to K-E-, and stated that because he never filed any documents with USCIS based upon a marriage to K-E-, he knows that he “was probably a victim of the fraud [HPPS] perpetrated.”

The director again affirmed the denial of the petition on April 28, 2010. In his decision, the director stated that although the petitioner’s assertion that he was never married to K-E- was credible, section 204(c) of the Act nonetheless barred approval of the petition because the petitioner had attempted to gain an immigration benefit based upon a relationship with K-E-.

In his May 24, 2010 letter submitted on appeal, the petitioner contends that he is not subject to the provisions of section 204(c) of the Act because: (1) he was never married to K-E-; and (2) he was not aware that HPPS had filed a fraudulent application on his behalf.

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).

The director found the evidence of record sufficient to establish that the petitioner was in fact never married to K-E-, and the AAO agrees. However, the record nonetheless demonstrates that section 204(c)(2) of the Act bars approval of the petition.

As set forth above, section 204(c)(2) of the Act requires only that the petitioner attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Here, the record of proceeding establishes that the petitioner conspired to enter into a marriage with K-E-. He signed both his Form I-485 and his Form G-325A as the spouse of K-E-. 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.

Although the relevant evidence supports the petitioner's assertion that he never actually married K-E-sufficient, the record establishes nonetheless that he filed an application for permanent residency on the basis of a fictitious marriage. While the petitioner submits evidence of fraud perpetrated by [REDACTED], the forms that he claims were prepared by HPPS do not bear that company's name, and the petitioner submits no other evidence of his dealings with [REDACTED]. Moreover, the AAO notes that the petitioner's signatures on the Forms I-485 and G-325A match his signatures contained on the various documents submitted in connection with the instant petition. Both forms contain the handwritten notation, "My wife has petitioned for me." On the Form G-325A, this notation is directly beside the applicant's signature. Accordingly, the petitioner's assertions that he signed the forms "without properly reading" them and that he "never knew that a fraudulent marriage application for adjustment was filed" on his behalf are not credible. Independent review of the record reveals substantial and probative evidence that the petitioner attempted or conspired to enter into a marriage for the purpose of evading the immigration laws of the United States. Consequently, the AAO agrees with the director's determination that section 204(c)(2) 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 M-C- 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 section 204(c) of the Act bars approval 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 M-C-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must be denied for this additional reason.



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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.