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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services



B9

Date: DEC 21 2011

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

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:

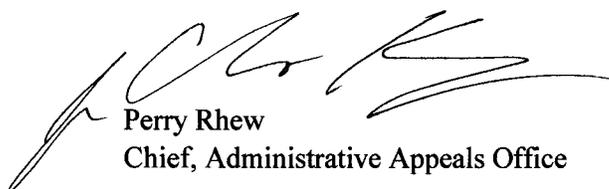


INSTRUCTIONS:

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 the \$630 fee. 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 Director, Vermont Service Center, (“the 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 pursuant to 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 his U.S. citizen spouse.

The director denied the petition because the petitioner has failed to demonstrate the existence of a qualifying relationship with a U.S. citizen, his eligibility for immigrant classification as an immediate relative on the basis of such a relationship, his entry into marriage with his wife in good faith and battery or extreme cruelty during their marriage. The director further determined that the petitioner is subject to the section 204(c) of the Act, 8 U.S.C. § 1154(c), bar to the approval of his petition because he attempted to enter into a prior marriage for the purpose of evading the immigration laws.

On appeal, counsel submits a three-paragraph statement.

*Relevant Law and Regulations*

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 further 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:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

(ii) *Legal status of the marriage.* . . . The self-petitioner's remarriage . . . will be a basis for the denial of a pending self-petition.

\* \* \*

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

\* \* \*

(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.

\* \* \*

(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 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.

\* \* \*

(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who entered the United States without inspection in September 1990. The petitioner's first marriage was on June 23, 1996 to M-V- in Santa Ana, California. Their marriage terminated in a divorce on February 9, 2005. The petitioner married his second wife, I-G-, a U.S. Citizen and the subject of the instant petition, on June 1, 2005 in Santa Ana, California. His marriage to I-G- terminated in a divorce on July 25, 2008. The petitioner wed his current spouse, M-D-, on September 20, 2008 in Santa Ana, California.

During the petitioner's marriage to his first wife, M-V-, he filed an application to adjust status (Form I-485) based on an underlying petition for alien relative (Form I-130) that was filed by C-M, a U.S. citizen who claimed to be his spouse. The Form I-130 was filed with a fraudulent marriage certificate reflecting that the petitioner married C-M- on March 18, 2002 in Los Angeles, California. U.S. Citizenship and Immigration Services (USCIS) became aware of the fraudulent marriage certificate and denied the Form I-130 filed by C-M- and the petitioner's corresponding Form I-485 on June 5, 2007. The petitioner was thereafter charged with willful misrepresentation of a material fact to procure immigration benefits and placed in removal proceedings.<sup>1</sup> The petitioner filed the instant Form I-360, based on his marriage to his second wife, I-G-, on July 23, 2010. The director denied the petition on July 13, 2011 and counsel timely appealed.<sup>2</sup>

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<sup>1</sup> The petitioner remains in removal proceedings before the Los Angeles Immigration Court and his next hearing is scheduled for January 13, 2012.

<sup>2</sup> On appeal, counsel asserts, "the I-360 was filed on July 22, 2010 and received by the service on July 23, 2010, making it two days short of the two year deadline." An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). The record reflects that the petitioner filed the Form I-360 on July 23, 2010, within two years of his divorce from

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

Upon a full review of the relevant evidence submitted below, we find no error in the director's determination that the petitioner did not establish that his former wife subjected him to battery or extreme cruelty. In his declaration, dated July 22, 2010, the petitioner stated that I-G- was addicted to prescription drugs and drank heavily. He recounted that I-G- pushed him against doorways, insulted him, slapped him across his face, and hit him with cooking pans. The petitioner stated that when he attempted to call the police, I-G- threatened that she would report him to immigration authorities. He recalled that I-G- talked to people on the internet and went out at night. The petitioner failed to describe in probative detail the specific incidents of the alleged abuse.

The petitioner's sister, [REDACTED] also stated in a declaration, dated July 22, 2010, that I-G- abused alcohol and drugs during her marriage to the petitioner. She recounted that I-G- insulted, yelled at, pushed and hit the petitioner with cooking pans. She recalled that I-G- used the petitioner's unlawful status to control and threaten him. [REDACTED] letter only reiterates the petitioner's statements and fails to describe in probative detail the specific incidents of the alleged abuse.

The petitioner has provided no other evidence of the alleged battery or extreme cruelty. On appeal, counsel acknowledges this deficiency as a basis of denial, but fails to further address it in the appeal statement or offer any additional evidence. Accordingly, the petitioner has not established by a preponderance of the evidence that his second wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Entry into the Marriage in Good Faith*

Upon a full review of the record, we find that the director correctly concluded that the petitioner failed to establish that he married his former spouse in good faith. In his declaration, the petitioner stated that he met I-G- through a mutual friend in early 2004. He recalled that I-G- supported him during his divorce from his first wife and he "truly fell in love with her." He stated that I-G- moved into the home he shared with his sister and nephew in April 2004. The petitioner did not further describe how he met his second wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

In [REDACTED] declaration, she briefly discussed the petitioner's second marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's

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I-G-. The director's notation that the Form I-360 was filed on July 28, 2010 appears to be a typographical error, and did not prejudice the petitioner because the Form I-360 was not denied as untimely filed.

good faith in entering the relationship. [REDACTED] reiterated that the petitioner met I-G- though a mutual friend in early 2004. She stated, “[a]t the beginning everything was fine with [I-G-] and my brother. They seemed to be in love.” [REDACTED] letter provides no specific information demonstrating that the petitioner married his wife in good faith.

On appeal, counsel asserts that USCIS approved the Form I-130 filed by I-G- on the petitioner’s behalf. Counsel contends that by approving the petition, “USCIS affirmed their relationship at that time.” The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, “the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws.”). In this case, the petitioner provided only a cursory description of his marriage and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof.

Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) and 204(a)(1)(A)(iii) of the Act are not identical. The petitioner’s second wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner’s good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). However, the regulations concerning spousal, immediate relative petitions contain no similar evidentiary requirements to establish the bona fides of the marriage except in cases of marriage fraud (8 C.F.R. § 204.2(a)(1)(ii)); marriages entered into when the alien spouse was in proceedings (8 C.F.R. § 204.2(a)(1)(iii)); and marriage within five years of the petitioner’s obtainment of lawful permanent resident status (8 C.F.R. § 204.2(a)(1)(i)). Accordingly, the approval of I-G-’s Form I-130 does not bar an examination of the petitioner’s good-faith entry into their marriage or relieve the petitioner of his burden to establish this statutory requirement in the instant case.

A full review of the relevant evidence submitted below fails to reveal any error in the director’s determination. The petitioner submitted two bank statements, which show that the petitioner and his second wife held a joint bank account in December 2005 and January 2006. In his declaration, the petitioner briefly asserts his love for his wife, but does not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. The declaration from the petitioner’s sister does not discuss in probative detail her observations of the petitioner’s interactions with or feelings for his former wife during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his second wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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)(1)(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). U.S. Citizenship and Immigration Services (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 correctly concluded that section 204(c) of the Act bars approval of this petition. The record shows that C-M-, a U.S. citizen, filed a Form I-130 on behalf of the petitioner as her spouse and the petitioner filed a corresponding Form I-485. A California birth certificate for C-M- and a California marriage certificate for C-M- and the petitioner were submitted as supporting documentation. On June 5, 2007, the director of the Santa Ana Field Office denied the Form I-130 petition with a determination that the marriage certificate was fraudulent.

Section 204(c)(2) of the Act does not require an actual marriage, but an attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws. The evidence of an attempt or conspiracy must be documented in the alien's file and must be substantial and probative. *Matter of Tawfik*, 20 I&N Dec. at 167. An independent and de novo review of the relevant evidence establishes that the petitioner attempted to enter into a marriage with C-M- for the purpose of evading the immigration laws. The record shows that the petitioner had knowledge that the Form I-130 was filed on his behalf by C-M-. The signatures on the Form I-485 and Form G-325A the petitioner concurrently filed with C-M-'s Form I-130 strongly resemble the signatures on the petitioner's Form I-360 and his

three marriage certificates. The fraudulent marriage certificate that was filed with the Form I-130 also contains the petitioner's signature. Although no actual marriage took place between the petitioner and C-M-, on the petitioner's Form I-485, he stated that he was married to C-M- and on his biographic information sheet (Form G-325A) he stated that he married C-M- on March 18, 2002. The fact that the petitioner was actually married to his first wife, M-V-, during the time that these events occurred further demonstrates that the petitioner knew that he was attempting to engage in a sham marriage for the purpose of evading the immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

The record reflects that the petitioner divorced I-G- on July 25, 2008. He married his third and current wife, M-D- on September 20, 2008, prior to filing the instant Form I-360 on July 23, 2010. In denying the petition, the director determined that pursuant to 8 C.F.R. § 204.2(c)(1)(ii), remarriage prior to the filing of a Form I-360 precludes its approval. The director concluded that because the petitioner remarried, he failed to demonstrate the existence of a qualifying relationship with I-G- and his eligibility for immigrant classification as an immediate relative on the basis of such a relationship.

On appeal, counsel contends that 8 C.F.R. § 204.2(c)(1)(ii) is not binding because it "is merely a regulation and not the law." Counsel cites no authority to support his contention. Counsel also fails to acknowledge that section 204(a)(1)(A)(iii)(II)(aa) of the Act specifies five types of qualifying spousal relationships, none of which encompass a prior spouse when the alien has remarried. *See also Delmas v. Gonzalez*, 422 F.Supp.2d 1299 (S.D. Fla. 2005) (alien's remarriage prior to filing self-petition was disqualifying). Therefore, we find no error in the director's determination that because of the petitioner's remarriage, he lacks a qualifying relationship with his alleged abuser, a U.S. citizen, and corresponding eligibility for immediate relative classification pursuant to such a relationship.

The petitioner has also failed to demonstrate a qualifying relationship with his former wife because he failed to establish the requisite battery or extreme cruelty. The record shows that the petitioner and I-G- were divorced on July 25, 2008 before this petition was filed on July 23, 2010. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has thus failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

*Conclusion*

On appeal, the petitioner has failed to demonstrate the existence of a qualifying relationship with a U.S. citizen, his eligibility for immigrant classification as an immediate relative on the basis of such a relationship, his entry into marriage with his second wife in good faith and her battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Approval of this petition is further barred by section 204(c) of the Act

because the record demonstrates that the petitioner attempted to marry another woman for the purpose of evading the immigration laws.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

**ORDER:** The appeal is dismissed.