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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

U.S. Citizenship and Immigration Services

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 2 4 2011

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 $630. 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: Although the service center director initially approved the immigrant visa petition, he subsequently issued a notice of intent to revoke (NOIR), and ultimately revoked, 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 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 United States citizen.

The director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish: (1) that her husband subjected her to battery or extreme cruelty; and (2) that she married him in good faith. On appeal, counsel submits an argument made on the Form I-290B, Notice of Appeal.

Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, five months later, we have not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

> The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

> Any Service officer authorized to approve a petition[1] under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1[2] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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

[1] In this case, the director of the Vermont Service Center.
[2] None of the grounds specified at 8 C.F.R. § 205.1 apply here.

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, the following:

> 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 . . . .
>
> (v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
>
> (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 standard and 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Morocco, married G-H-,[3] a citizen of the United States, on November 2, 2000. Her Form I-485, Application to Register Permanent Residence or Adjust Status,[4] that she filed based upon her marriage to G-H-, was denied, in part, on the basis of the Cleveland Field Office Director's determination that the petitioner had soughtto procure admission into the United States as a lawful permanent resident based upon a fraudulent marriage.

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[3] Name withheld to protect individual's identity.

[4] See Form I-485, filed February 16, 2001 and denied on May 23, 2008.

The petitioner filed the instant Form I-360 on January 31, 2008. The director issued two subsequent requests for additional evidence to which the petitioner, through prior counsel, filed timely responses. The director approved the petition on August 27, 2009. The director issued a NOIR on April 20, 2010 and, finding the petitioner's response insufficient to overcome his proposed grounds for revocation, revoked approval of the petition on August 16, 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, we find that the petitioner has failed to overcome the director's grounds for revoking approval of this petition. Beyond the decision of the director, we find that the petitioner has also failed to establish that she and her husband shared a joint residence; that section 204(c) of the Act further bars approval of the petition; and that, because the petitioner has not complied with section 204(c) of the Act, she is consequently ineligible for immediate relative classification based upon her marriage to G-H-. Revocation of the approval of this petition was therefore proper pursuant to section 205 of the Act and 8 C.F.R. § 205.2(a).[5]

Battery or Extreme Cruelty

The first issue before the AAO on appeal is whether the petitioner has established that G-H- subjected her to battery or extreme cruelty during their marriage. In her August 13, 2007 self-affidavit, she stated that G-H- abused alcohol and stayed out late. In her January 28, 2008 self-affidavit, the petitioner stated that G-H- abused her throughout the entire period of time during which they lived together and that G-H- yelled at her; threw things; and insulted and embarrassed her.

Although the petitioner stated in her January 28, 2008 self-affidavit that she was subjected to abuse throughout the entire period during which she lived with G-H-, she stated in her June 15, 2009 affidavit that he was kind to her after they began living together in April 2000, and that things did not change until a few months after their November 2000 wedding. Although she had previously made no claim of physical abuse beyond her statement that G-H- threw things "around," she now stated that he threw things at her directly; spat on her; and tried to choke her. Although she previously made no mention of being controlled by him, she now stated that G-H- wanted to know where she was every minute of the day; that he monitored the amount of time it took her to get to

[5] On appeal, counsel argues that approval of the petition should not have been revoked because the evidence upon which the director based his decision was present in the petitioner's file at the time he approved the petition on August 27, 2009, and therefore cannot be considered new. We disagree. First, the record indicates clearly that the information regarding the investigation conducted by U.S. Immigrations and Customs Enforcement (ICE) was not before the director at the time he issued his initial approval of the petition, as neither of the requests for evidence he issued before approving the petition addressed the investigation. Moreover, as set forth above, section 205 of the Act specifically states that the Secretary of the Department of Homeland Security is empowered to revoke approval of a petition approved under section 204 of the Act at any time for what she deems to be good and sufficient cause, and 8 C.F.R. § 205.2(a) states that the director may revoke approval of a petition on any ground, other than those specified at 8 C.F.R. § 205.1, when the necessity for the revocation comes to the attention of USCIS.

and from work; that he did not allow her to receive telephone calls at home; and that he forbade her from seeing her friends. Finally, the petitioner also stated in her June 15, 2009 self-affidavit that G-H- made her sleep on the couch, screamed at her, complained about her housekeeping, called her racist names, threatened her immigration status; and was mean to her when he was intoxicated.

stated in her May 28, 2008 affidavit that she saw G-H- insult, berate and abuse the petitioner when he was drunk, but she described no incident of abuse in probative detail. In her June 18, 2009 affidavit, stated that the petitioner told her that G-H- was abusive and called her names; cursed at her; forbade her to have friends; and threatened her immigration status. stated in her June 18, 2009 affidavit that the petitioner told her that G-H- was verbally and physically abusive and controlling; did not want her to have friends; did not allow her to see her friends or talk to members of her family; and called her names. In her June 18, 2009 affidavit, ated that the petitioner stayed with her following an argument with G-H-, and told her that G-H- called her names; yelled at her; threw things at her; pushed her; and threatened her immigration status.

The petitioner's claim of abuse by G-H- contains numerous inconsistencies. As noted previously, on January 28, 2008 she stated that she was abused throughout the entire period of their joint residence. However, on June 15, 2009 she stated that the abuse began several months after their marriage (which took place seven months after they began living together). Although she made such claims in her June 15, 2009 self-affidavit, the petitioner did not mention being physically abused or controlled in her January 28, 2008 self-affidavit. These inconsistencies diminish the probative value of her testimony regarding the alleged abuse.

Moreover, the petitioner claims to have been controlled by G-H- during their marriage, but also states that she had an extramarital affair during this time. Again, the petitioner stated that G-H- wanted to know where she was every minute of the day; that he monitored the amount of time it took her to get to and from work; did not allow her to receive telephone calls; and forbade her from seeing friends. However, the record establishes that the petitioner gave birth to a son on June 5, 2002.[6] As G-H- is not the father of this child, it is unclear how, if she was being controlled so tightly by G-H-, the petitioner was able to have an extramarital affair.

Nor does the testimony of the petitioner's affiants establish that she was subjected to battery or extreme cruelty, as their testimony regarding the abuse was generalized in nature and lacking in detailed, probative descriptions of specific instances of such abuse.

The February 4, 2010 letter from the attorney who previously represented the petitioner in her immigration processing, which was submitted in response to the director's April 20, 2010 NOIR, adds further inconsistency into the record regarding the alleged abuse. According to this letter is a summary of the petitioner's October 10, 2002 interview before the legacy Immigration and Naturalization Service (INS). According to , the petitioner told

[6] We note that the petitioner made no mention of her son at page 3, part 8 of the Form I-360.

the INS officer conducting the interview that "on June 15, 2002 their marital problems began." As the petitioner claims that she and G-H- began living together in April 2000, this statement contradicts her January 28, 2008 testimony that she was abused throughout their period of joint residence. It is also inconsistent with her August 13, 2007 statement that G-H- decided to move into his son's home after his November 2001 release from the nursing home, as the alleged joint residence would have ended several months before June 15, 2002. The assertion that the couple's marital problems began on June 15, 2002 also conflicts with the petitioner's statements regarding race- and religion- based insults made by G-H- following the September 11, 2001 terrorist attacks on the United States, but before his October 2001 admittance to a nursing home. It also conflicts with June 18, 2009 statements regarding the manner in which the petitioner cared for G-H- while he was in a nursing home regardless of "how badly he had abused" the petitioner prior to that point: again, the documentary evidence of record indicates that G-H- was admitted to the nursing home in October 2001, and the petitioner's assertion that the marital problems began on June 15, 2002 is not consistent with tatements regarding abuse to which the petitioner had been subjected by G-H- prior to October 2001. Finally, we note that the handwritten statement accompanying letter indicates that the interviewing officer asked whether there had been any physical violence with G-H-, and that the petitioner answered in the negative. For all of these reasons, letter does not establish that the petitioner was subjected to battery or extreme cruelty perpetrated by G-H-.

As set forth above, the testimonial evidence of record regarding the alleged abuse is contains significant, unresolved inconsistencies and we agree with the director's determination that the petitioner has failed to establish that she was subjected to battery or extreme cruelty perpetrated by G-H- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In her August 13, 2007 self-affidavit, the petitioner stated that she met G-H- while working as a server at a restaurant. She stated that G-H- invited her out and they began doing things together. The petitioner stated that G-H- was the only person she knew at the time, and that he was very helpful to her. He eventually suggested that he move into her apartment and, in her June 15, 2009 self-affidavit, the petitioner stated that G-H- was very nice to her while they were dating.

The petitioner's testimony does not establish that she entered into the marriage in good faith, as she failed to provide any probative details regarding her relationship with G-H-. For example, although she stated that she and G-H- went to many places, she did not provide any examples of the types of places they went. Nor did she provide any specific information regarding their first introductions; their decision to date; their courtship; their engagement; or their wedding. Nor did she discuss how they handled her extramarital affair and resultant pregnancy. Nor does the other testimonial evidence of record establish that she entered into marriage with G-H- in good faith. Although tested to the petitioner's good faith entry into the marriage in general terms, their testimony also lacked detailed, probative information regarding the couple's relationship. Moreover, we note that although stated that she has known the

petitioner since 1999, the petitioner stated that when she met G-H- in 2000, he was the only person she knew.

Nor does the documentary evidence of record establish that the petitioner married G-H- in good faith. Although the record contains letters indicating that the petitioner visited G-H- while he lived in a nursing home between October 25 and November 9, 2001, the handwritten note that accompanied [redacted] February 4, 2010 letter states that the petitioner was having an extramarital affair while G-H- was in the nursing home.[7] As she was having an extramarital affair during these visits, we do not find them probative evidence of her good faith entry into the marriage.

The record also contains evidence that the petitioner visited G-H- for fifteen minutes on July 6, 2002 while he was incarcerated, and that she gave him ten dollars. The record also contains evidence that she gave him ten dollars on August 10, 2002. However, the petitioner stated that G-H- was incarcerated for two months and one fifteen-minute visit and two ten-dollar gifts over such a period are insufficient to demonstrate her good faith in regards to their marriage.

Nor does the evidence of a joint checking account establish any shared financial obligations. Although the bank statements name both G-H- and the petitioner and display the address at which the couple allegedly lived together, the checks name only the petitioner, and all canceled checks were written by the petitioner. As there is no evidence that G-H- had access to, or ever accessed, this account, its existence is not evidence of any shared financial obligations. Counsel argued in her April 20, 2010 letter that because G-H- was unemployed and had drinking problems, it fell to the petitioner to pay the bills. However, even if we were to assume, *arguendo*, that such was in fact the case, because there is no evidence that G-H- had access to, or accessed, this account, its mere existence does not serve as evidence of any joint financial obligations.

Nor is the evidence that the petitioner and G-H- filed a 2001 joint tax return evidence of shared financial obligations. G-H- did not sign the Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return; the petitioner signed for both herself and G-H-, and there is no indication that G-H- played any part in the filing of this tax return.

Nor are the utility bills evidence of a good faith marriage. The [redacted] were issued in the petitioner's name only. Moreover, the SBC Ameritech statements were issued in 2002 which, according to the petitioner's August 13, 2007 testimony, was after G-H- moved into his son's residence and ended the joint residence with her. Counsel argued in her May 20, 2010 letter that the SBC Ameritech statements are evidence of the petitioner's good faith marriage because they contained evidence that the petitioner accepted collect

[7] [redacted] handwritten note indicated that the petitioner's infidelity began in August 2001.

calls from G-H-. However, the record contains no evidence to establish that any of those calls originated from G-H-.[8]

The medical bills and letter from addressed to G-H- were both issued in 2002, after the alleged joint residence ended, according to the petitioner's August 13, 2007 testimony. Therefore, they are not evidence of shared financial obligations.

Nor is the information regarding the Allstate car insurance policy evidence of the petitioner's good faith entry into the marriage. This policy took effect on October 26, 2001, after G-H- had moved into the nursing home and, according to the petitioner's August 13, 2007 testimony, G-H- moved into his son's home after his release from the nursing home. This policy took effect after the cessation of the alleged joint residence and is not credible evidence of shared financial obligations.

Nor is the August 1, 2001 lease signed by the petitioner evidence of her good faith entry into the marriage, as the record indicates she was having an extramarital affair at the time she signed it. Nor is the 2002 lease evidence of her good faith entry into the marriage, as she signed it, and G-H- initialed it, on November 1, 2002, long after the alleged joint residence ended.

Nor do the copies of photographs of the couple together establish the petitioner's good faith entry into the marriage, as they are only evidence that the petitioner and G-H- were pictured together on one occasion.

The petitioner has failed to establish that she entered into marriage with G-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the decision of the director, we also find that the petitioner has failed to establish that she shared a joint residence with G-H-, and we withdraw the director's contrary finding in his August 16, 2010 decision revoking approval of the petition.

The petitioner stated on the Form I-360 that she and G-H- lived together from April 2000 until October 2002, and in her June 15, 2009 self-affidavit she stated that they lived together during that period of time "as husband and wife." However, the record also contains evidence that G-H- lived in a nursing home from October 25 until November 9, 2001, and in her August 13, 2007 self-affidavit, the petitioner stated that after G-H- was released from the nursing home he moved into his son's residence. However, in her June 15, 2009 self-affidavit, she stated that G-H- returned to their

[8] The evidence submitted by the petitioner indicated that G-H- was incarcerated by the Lakewood Police Department. However, the calls highlighted by counsel on the SBC Ameritech bill all originated from Bedford, Ohio. An online mapping service indicates that Lakewood, Ohio and Bedford, Ohio are, at minimum, 17 miles apart. *See* http://maps.google.com/maps?hl=en&tab=wl (accessed February 10, 2011).

joint residence after his release from the nursing home. This contradiction diminishes the probative value of the petitioner's testimony regarding the alleged joint residence.

Nor does the other testimonial evidence of record establish that the petitioner and G-H- shared a joint residence. Although tated that G-H- and the petitioner lived together, and that they visited the couple's apartment, they did not, for example, describe the apartment, any of the couple's furnishings or other jointly-held possessions, or any other aspect of the alleged joint residence in any meaningful way. Their statements, therefore, do not establish that G-H- and the petitioner resided together.

Nor does the documentary evidence of record establish that G-H- and the couple resided together. The record contains a residential lease for an apartment located at signed by both G-H- and the petitioner on August 1, 2001, and covers the period August 1, 2001 through July 31, 2002, but other evidence in the record undermines its probative value. The record contains another lease for the same apartment, dated November 1, 2002, covering the period November 1, 2002 through October 31, 2003. Although this signature line of this second lease only contained the signature of the petitioner, both G-H- and the petitioner were named as tenants, and G-H- initialed the lease at several places. That the petitioner and G-H- entered into a joint lease on November 1, 2002 contradicts the petitioner's testimony that the alleged joint residence ended, alternatively, both after G-H- left the nursing home in November 2001 as well as in October 2002.

Nor does the evidence of a joint checking account establish that the couple resided together. Although the bank statements name both G-H- and the petitioner and display the alleged address at which the couple lived, the checks name only the petitioner, and all the canceled checks were written by the petitioner. As there is no evidence that G-H- had access to, or ever accessed, this account, its existence is not evidence of a shared residence.

Nor do the utility bills establish that the couple lived together. The bills were issued in the petitioner's name only. Moreover, the SBC Ameritech statements were issued in 2002, after the alleged joint residence ended, according to the petitioner's August 13, 2007 testimony.

The medical bill and letter from the addressed to G-H- were both issued in 2002, after the alleged joint residence ended, according to the petitioner's August 13, 2007 testimony.

Nor is the information regarding the Allstate car insurance policy evidence that the couple resided together. This policy took effect on October 25, 2001, after G-H- had moved into the nursing home, and, according to the petitioner's August 13, 2007 testimony, G-H- moved into his son's home after his release from the nursing home. Accordingly, the policy and its April 26, 2002 renewal took effect after the cessation of the alleged joint residence.

The record also contains a copy of an invoice submitted as evidence that the couple bought furniture together during the period of the alleged joint residence, and the invoice lists the However, this document is, alone, insufficient to establish that the petitioner resided with G-H-.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner resided with G-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and the director's contrary determination is hereby withdrawn.

Section 204(c) of the Act

Beyond the decision of the director, we also find that section 204(c) of the Act further 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 record in this case does not demonstrate such compliance.

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).

In this case, the director of the USCIS Cleveland Field Office denied the petitioner's Form I-485, Application for Permanent Residence on May 23, 2008 on the basis of her determination that the petitioner married G-H- in order to circumvent the immigration laws of the United States. In relevant portion, the field office director concluded that "[the petitioner] has, by fraud, sought to procure admission into the United States as a Lawful Permanent Resident based upon a fraudulent marriage."

Although the record contains evidence that the petitioner was listed as G-H-'s spouse on insurance policies, property leases, an income tax return, and a bank account, the evidentiary deficiencies regarding each of those documents was discussed above. The petitioner has also failed to submit meaningful testimony regarding the couple's courtship, wedding ceremony, shared residence, and experiences together. She has failed to establish that she ever resided with G-H-, and she has failed to establish that she married him in good faith. Her testimonial and documentary evidence

regarding the alleged joint residence and good faith entry into the marriage also contain numerous, unresolved inconsistencies.

In addition, pursuant to the information submitted by in these proceedings regarding the August 17, 2001 interview regarding the petitioner's adjustment application based on the immigrant petition filed by G-H-, the petitioner was engaging in an extramarital affair in August 2001, which calls into question the veracity of her claim to a bona fide marriage at the time of this interview.

Upon an independent review of the entire record, we find that approval of this petition is barred by section 204(c) of the Act, as the relevant evidence of record indicates that the petitioner entered into marriage with G-H- for the purpose of evading the immigration laws of the United States.

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. She is consequently ineligible for immediate relative classification based upon her marriage to G-H- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for that reason. For this additional reason, the petition may not be approved.

Conclusion

As set forth above, the petitioner has failed to establish that she was abused by G-H- or that she married him in good faith. Beyond the decision of the director, we find that the petitioner has also failed to establish that she and G-H- resided together; that section 204(c) of the Act further bars approval of this petition; and, because the petitioner has not complied with section 204(c) of the Act, that she is ineligible for immediate relative classification based upon her marriage to G-H-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and the director, therefore, properly revoked the approval of this petition, pursuant to section 205 of the Act and 8 C.F.R. § 205.2(a).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Approval of this petition will remain revoked and the appeal will be 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.