

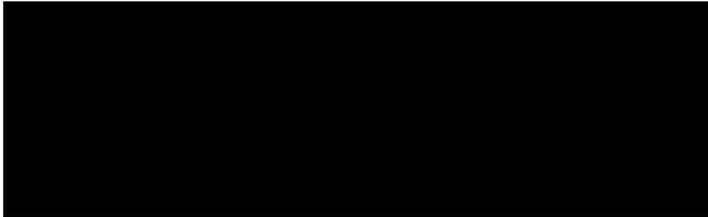
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date **JAN 20 2011**

IN RE:

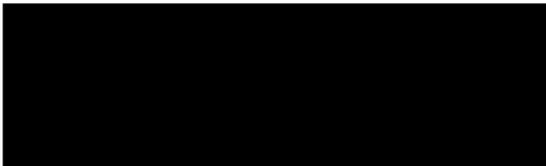
Petitioner:



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 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: The Director, Vermont Service Center, denied the immigrant visa petition and the petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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 her United States citizen spouse.

On March 10, 2010, the director denied the petition, determining that the petitioner was barred from receiving benefits based on section 204(c) of the Act. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, and re-submitted a brief.

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 based on his or her relationship to the abusive spouse, 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 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 evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are explained 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.

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 [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)(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. [REDACTED] United States 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. [REDACTED]

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Venezuela. She entered the United States on or about January 15, 2003 as a visitor. The petitioner married her first husband, [REDACTED]¹, on August 6, 2004. [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which was withdrawn on October 25, 2006. The petitioner acknowledges that she entered into her marriage with [REDACTED] in order to obtain immigration benefits and that she never resided with him and never consummated the marriage. On March 1, 2007, the petitioner was granted a divorce terminating her marriage to [REDACTED]. On April 13, 2007, the petitioner married her second husband, [REDACTED]², the claimed abusive United States citizen spouse.³ [REDACTED] filed a Form I-130 on the petitioner's behalf on July 27, 2007 which was denied on May 16, 2008, based on the petitioner's previous sham marriage and the prohibition of approval pursuant to section 204(c) of the Act. On July 29, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that she resided with [REDACTED] from May 2003 to February 2008. The director issued a Notice of Intent to Deny (NOID) the petition on October 27, 2009. After reviewing counsel's response to the NOID, the director denied the petition determining that the petitioner had not overcome the basis of the NOID. On appeal, counsel for the petitioner again presents arguments for approval of the Form I-360.

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

³ The record includes [REDACTED] divorce from his first wife, which was granted on August 10, 2005.

Section 204(c) of the Act

In the petitioner's July 1, 2008 affidavit, she stated that █████ told her he would pay a United States citizen to marry her so that she could remain in the United States with him. The petitioner declared that she did not want to break the law but that █████ kept pressuring her until it became unbearable and she agreed to do whatever █████ said. Counsel asserts that the petitioner entered into her first marriage involuntarily. Counsel asserts that the petitioner's entry into a marriage solely for immigration reasons may be excused or waived because although it is an act that statutorily bars a determination of good moral character, the act was connected to the battery or extreme cruelty by a United States citizen. Counsel does not address the mandatory provisions of section 240(c) of the Act.

We concur with the director's determination that the issue of marriage fraud under section 204(c) of the Act is not an issue of good moral character defined by section 101(f) of the Act.

Our independent review of the record in this matter establishes that the petitioner's marriage to J-G- was entered into for the purpose of evading the immigration laws and section 204(c) of the Act consequently mandates the denial of the petition. The record contains the petitioner's own statements that she entered into the marriage with █████ in order to obtain an immigration benefit through fraud. We acknowledge counsel's assertion that the petitioner was forced into the sham marriage by her abusive boyfriend, who later became her husband, and the petitioner's polygraph test⁴ submitted in support of his assertion. However, the petitioner's documented admission of marriage fraud is substantial and probative evidence of her attempt to be accorded immediate relative status through a marriage that was entered into for the purpose of evading the immigration laws. Accordingly, section 204(c) of the Act bars approval of the instant petition.

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

⁴ The value of the polygraph is questionable for the same reasons that have led the federal courts to find them inadmissible. The results of a polygraph test may not be used to establish the veracity of the assertion tested. In establishing this rule, the courts have determined that "the polygraph has not yet been accepted . . . as a scientifically reliable method of ascertaining truth or deception." *United States v. Gloria*, 494 F.2d 477 (5th Cir. 1974). Finally, it is noted that the petitioner has not revealed the methodologies of the polygraph testing but rather submitted a cursory summary of the results, and has not established the credentials of the polygraph examiner or the standards used.