

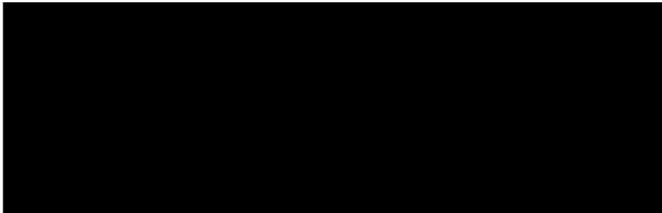
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 20 2011

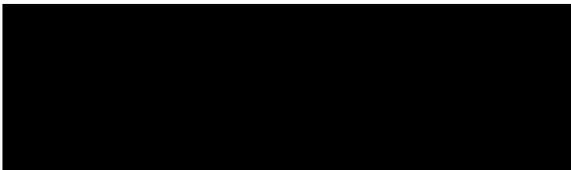
IN RE:

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 July 13, 2010, the director denied the petition, determining that the petitioner had not established eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on a qualifying relationship with a United States citizen spouse. The director found that the petitioner was barred from receiving benefits based on section 204(c) of the Act because she had previously entered into a sham marriage. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and an additional affidavit on appeal.

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. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). 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. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria. She entered the United States on or about February 2, 2002 as a visitor. The petitioner married C-B-<sup>1</sup>, on March 3, 2003. C-B- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner which was denied on July 12, 2004, based on C-B-'s simultaneous contractual multiple marriages to two additional women. U.S. Citizenship and Immigration Services (USCIS) concluded that the marriage between the petitioner and C-B- was entered into solely to enable the petitioner in this matter to obtain an immigration benefit. On October 1, 2004, the petitioner was granted a divorce terminating her sham marriage to C-B-. On December 13, 2004, the petitioner married O-A-<sup>2</sup>, the claimed abusive United States citizen spouse. On October 26, 2007, 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 O-A- from November 2004 to December 2005. The director issued a request for evidence (RFE) on January 7, 2010. After reviewing the petitioner's response to the RFE, the director denied the petition determining that the petitioner had not established that her previous marriage to C-B- was not a sham marriage. On appeal, the

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

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

petitioner provides a September 13, 2010 affidavit from C-B- and re-submits previously provided documentation.

*Section 204(c) of the Act*

In the petitioner's September 23, 2007 personal statement, she stated that she began dating O-A- in July 2004 and they decided that O-A- would move into her apartment. The petitioner noted that she married O-A- on December 13, 2004.

In response to the director's RFE requesting evidence that the petitioner's first marriage was not a sham marriage, the petitioner provided:

- A Texas liability insurance card for the petitioner and C-B- effective for a two-month period for a rental car;
- Lease agreements dated September 29, 2003 and October 1, 2004, listing the petitioner as the lessee and C-B- as "occupant";
- An Internal Revenue Service (IRS) printout showing the petitioner and C-B- filed taxes as married, filing jointly in 2003;
- Bank statements for a checking and savings account, listing the petitioner and C-B- as joint account holders for a time period between October 2003 to December 2004;
- Utility bills for the petitioner and C-B- as joint account holders for electric service from July 2004 to January 2005;
- A September 2, 2004 letter confirming authorization to debit the petitioner and C-B-'s checking account on September 1, 2004 for electric service; and
- The Final Degree of Divorce terminating the marriage between the petitioner and C-B- issued on October 6, 2004, indicating that 60 days had elapsed prior to the date of the Divorce Judgment.

On appeal, the petitioner provided the sworn statement of C-B-, in which he declared that: he proposed to the petitioner; he and the petitioner met each other's families; his name was on the lease agreement as an occupant because of his bad credit history; he married other women for financial gain, but the petitioner was unaware of his activity; and he married the petitioner for love. C-B- references the above documents previously submitted and the petitioner re-submits these documents.

Upon review of the record, the AAO independently determines that the petitioner's marriage to C-B- was entered into for the sole purpose of evading the immigration laws and section 204(c) of the Act consequently mandates the denial of this petition. The petitioner does not provide a statement detailing the circumstances and interactions with C-B- prior to or during the marriage. In the petitioner's September 23, 2007 statement, she declared that she began dating O-A- in July 2004 and that O-A- moved into her apartment prior to their marriage; however the documents she submitted to establish that her good faith intent in entering into the marriage with C-B- show that during this same time period she was allegedly living with C-B-. The bank statements submitted do not reveal that the account was used to comingle assets and to pay for shared living expenses. The

bank statements, the October 1, 2004 lease, and the utility statements continue to place C-B- at the petitioner's residence, subsequent to the time she filed for divorce, subsequent to the time she began dating O-A-, and subsequent to the time in some instances when she had entered into marriage with O-A-. The circumstances and timing of these documents and events undermine the probative value of these documents in demonstrating that the petitioner and C-B- entered into marriage intending to establish a life together. In light of the lack of probative testimony, the filing of one income tax return is also insufficient to establish that the couple entered into the marriage in order to establish a life together. Upon review of the documents submitted, the documents are insufficient to establish that the petitioner married C-B- with the intent to establish a life with him. C-B-'s affidavit submitted on appeal does not offer any substantive, probative information detailing the circumstances and interactions of the couple prior to or during their marriage. C-B-'s affidavit also cannot be used to establish the petitioner's own intent in entering into the marriage. In this matter, the petitioner has not offered probative testimony, explanations, or evidence establishing that she entered into her marriage with C-B- in order to establish a life together. Upon review of the totality of the relevant evidence in the record, the AAO finds that the petitioner entered into marriage with C-B- solely to obtain an immigration benefit and not to establish a life together. Consequently, 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.