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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**

Bq



FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 08 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 26, 2010, the director denied the petition, determining that the petitioner was not credible and had not established that she had a qualifying relationship with the claimed abusive spouse. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, a brief, and additional documentation.

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.
- (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and

proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

### *Facts and Procedural History*

The petitioner is a native and citizen of Honduras. She initially entered the United States on or about July 26, 1989 as a B-2 visitor. The petitioner's passport shows that she returned to Honduras on July 30, 1991 and subsequently reentered the United States on October 31, 1991 as a B-2 visitor.<sup>1</sup>

The record includes a marriage certificate showing that the petitioner married J-C-<sup>2</sup>, on October 10, 1990 in Queens, New York. The record also includes a Form I-130, Petition for Alien Relative, filed by J-C- on the petitioner's behalf on or about April 6, 1994 and a concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status. The Forms I-130 and I-485 were denied on September 9, 1994 and the petitioner was granted until October 9, 1994 to voluntarily depart the United States.

On December 28, 1995, the petitioner married M-K-<sup>3</sup> in New York. On July 12, 1996, M-K- filed a Form I-130 on the petitioner's behalf and the petitioner concurrently filed a Form I-485. The petitioner and M-K- were scheduled for an immigration interview on February 20, 1997, at which time the petitioner was told that legacy Immigration and Naturalization Service (INS) records revealed that she was still married to J-C-. The petitioner and M-K- were rescheduled for a "Stokes" interview to take place on September 8, 1997 to further evaluate the legitimacy of the petitioner and M-K-'s marriage. Both parties appeared for the Stokes interview and the legacy INS adjudicator found inconsistencies between the testimony of the petitioner and the testimony of M-K- regarding the legitimacy of the marriage. On December 29, 1997 the Form I-130 was denied because the petitioner had entered into a fraudulent marriage with M-K-. The petitioner, through counsel, appealed the decision made on the Form I-130 to the Board of Immigration Appeals (BIA). On November 29, 1999, the petitioner divorced M-K-. On April 21, 2001, the BIA dismissed the petitioner's appeal of the denial of the Form I-130 as the petitioner, a beneficiary of the Form I-130 filing, did not have standing to appeal. The petitioner's Form I-485 was denied on June 20, 2001, and she was placed into removal proceedings before the immigration court in August 2001. On October 24, 2001, an immigration judge ordered the petitioner removed to Honduras.

On December 25, 2001, the petitioner married S-M-<sup>4</sup>, the claimed United States citizen abusive spouse. The record includes a Form I-130 filed by S-M- in 2002 on the petitioner's behalf and the petitioner's concurrently filed Form I-485. On May 27, 2004, U.S. Citizenship and Immigration Services (USCIS) denied the Form I-130 filed by S-M- because of the petitioner's sham marriage to M-K-, and determined that section 204(c) of the Act was applicable.

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<sup>1</sup> The record includes a Form I-94, Departure Record, showing the petitioner entered the United States on February 15, 1990, but the Form I-94 has been determined to be fraudulent.

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

<sup>3</sup> Name withheld to protect the individual's identity.

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

On February 3, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a Notice of Intent to Deny (NOID) the petition on April 28, 2010. The director notified the petitioner that the record showed that she had entered into her marriage with M-K- for the purpose of obtaining an immigration benefit; thus, section 204(c) of the Act was applicable. The director requested evidence to overcome the determination that the petitioner's marriage to M-K- was for the sole purpose of obtaining an immigration benefit. After reviewing the response to the NOID, the director denied the petition, determining that the petitioner had not overcome the basis of the NOID. The director specifically determined that the petitioner was not a credible witness and concluded that the evidence suggested that she had been married to J-C- and that she had not adequately resolved this inconsistency.

On appeal, counsel asserts that the petitioner never married an individual named J-C- and that the petitioner had provided her accurate biographic information to the purported immigration attorney in 1994 in order to file for asylum. Counsel also contends that the petitioner's listing of a marriage to J-C- in 1999 on her application for Temporary Protected Status (TPS) was a judgment made by the petitioner's prior legal counsel so that her TPS application would correspond to legacy INS records and that the petitioner acted on her prior counsel's advice. Counsel also submits Permanent Orders regarding the dissolution of marriage between the petitioner and S-M- entered by the District Court, County of Jefferson, State of Colorado, on October 8, 2010.

*The Petitioner's Marriage to J-C-*

Evidence in the record does not show the existence of a valid marriage between the petitioner and J-C- and, therefore, she does not need to establish that a termination of the marriage took place. The letter from the [REDACTED], indicates that no records exist of a marriage between the petitioner and J-C-. Accordingly, we withdraw the director's finding that a qualifying relationship did not exist between the petitioner and S-M-, the claimed abusive U.S. citizen spouse. The petition is not approvable, however, because section 204(c) of the Act is applicable in this matter based upon the fake marriage to J-C- as well as the petitioner's marriage to M-K-. As neither of these issues was raised in the director's denial decision, we shall remand the matter for entry of a new decision.

*Section 204(c) of the Act and the Petitioner's Marriage to J-C-*

In her May 27, 2010 declaration, the petitioner stated that she met a man in 1994 who she thought was an attorney. He told her that "immigration" was giving asylum to people from Central America and that he could help her. The petitioner asserted that she paid him \$500 during each of the three times she met with him to file an asylum application on her behalf. She states that she did not understand the forms very well because her English was not good, but she trusted this man to use the information that she gave him to correctly fill out her asylum application.

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[.]
- (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)(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). 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).

An independent review of the record shows that the petitioner attempted to enter into a marriage for the purpose of evading the immigration laws. The petitioner's claims regarding her alleged ignorance that an adjustment of status petition was being filed based upon a marriage to a U.S. citizen is not credible based upon the present record. The record contains the Form I-485 adjustment application and Form G-325A Biographic Form that were submitted in conjunction with the Form I-130 filed by J-C-. Each form listed information about her marriage to J-C-, and the petitioner signed both forms. Although the petitioner stated that her English was poor, she also asserted that she met with the man three different times about her immigration paperwork, and the petitioner's May 27, 2010 declaration does not contain the probative details about her meetings with the man for us to conclude that she was unaware that she was filing an application for lawful permanent residence status based upon marriage to a U.S. citizen rather than an asylum application. Without a more detailed statement explaining her interactions with the man she paid to help complete the paperwork relating to a marriage with J-C-, the petitioner's instant

I-360 Petition may not be approved because she attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

*Section 204(c) of the Act and the Marriage to M-K-*

Even if the petitioner could establish her ignorance that an alien relative petition and adjustment of status application were filed on her behalf based upon a fake marriage to J-C-, an approval of the instant Form I-360 would be barred by section 204(c) of the Act because of her fraudulent marriage to M-K.

The petitioner married M-K- on December 28, 1995, in New York. The marriage certificate shows both the petitioner and M-K- resided at 2752 Wallace Avenue. The petitioner's February 16, 1996 Form G-325A, Biographical Information sheet lists the petitioner's addresses in pertinent part: as [REDACTED] from January 1994 to January 1996; and [REDACTED] from January 1996 to present (February 16, 1996). In the petitioner's statement provided on appeal to the BIA regarding the denial of M-K-'s Form I-130, she stated that she and M-K- lived together as husband and wife, initially at [REDACTED] until the building was condemned at which time they moved to [REDACTED]

The record also includes: M-K-'s Internal Revenue Service (IRS) Form W-2 for 1995 addressed to M-K- at 2752 Wallace Avenue;<sup>5</sup> a copy of an uncertified 1995 IRS Form 1040EZ signed by M-K- on February 8, 1996 listing the petitioner as single and showing his address as [REDACTED] a February 8, 1996 letter from a tax service addressed to M-K- at 2752 Wallace Avenue; a copy of an uncertified IRS Form 8453, 1995 U.S. Individual Tax Declaration for Electronic Filing, listing only M-K- and showing his address at [REDACTED] and showing he filed as single; and a copy of an uncertified 1995 IRS Form 1040EZ, signed by both the petitioner and M-K- on March 23, 1996 showing the couple as married and showing their address as [REDACTED]. The record does not include clarifying information regarding the submission of two uncertified Forms 1040EZ for the 1995 tax year showing different information.

The record further includes M-K-'s 1996 IRS Form W-2 showing his address as [REDACTED] a copy of an uncertified 1996 IRS Form 1040EZ listing signed by both the petitioner and M-K- on February 1, 1997 showing the couple as married and showing their address as a post office box; and a copy of an uncertified IRS Form 8453, 1996 U.S Individual Tax Declaration for Electronic Filing, listing both the petitioner and M-K-, married and filing jointly, which shows their address as a post office box.

The record includes: M-K-'s New York State learner's permit issued on December 29, 1996 showing his address as [REDACTED] a one-year lease for premises located at [REDACTED] signed by the petitioner and M-K- beginning in April 1996; nine receipts for rent issued to the petitioner and M-K- that do not show the address of the rented premises;

<sup>5</sup> In the transcript of M-K-'s portion of the Stokes interview, M-K- indicates this was his mother's address.

photocopies of several NYNEX bills addressed to the petitioner in care of M-K- at an address on [REDACTED] and photocopies of several NYNEX bills addressed only to the petitioner at [REDACTED]; January 14, 1997 and September 2, 1997 letters from Chase Manhattan Bank showing the petitioner and M-K- opened a savings account on September 26, 1996; and two bank statements for the Chase Manhattan savings account for periods from October 1996 to December 1996 addressed to the petitioner and M-K- at [REDACTED]

The record also contains a transcript of the separate interviews of the petitioner and M-K- on September 8, 1997 and their joint interview and opportunity to clarify the inconsistencies between their statements on the same date.

In response to the director's April 2010 NOID on the issue of the legitimacy of the petitioner's marriage to M-K-, the petitioner provided a statement dated May 27, 2010. On the issue of her intent in entering into marriage with M-K-, the petitioner declared that: she met M-K- on Thanksgiving Day in 1994 at her aunt's house and that he was the son of her aunt's co-worker who also attended the Thanksgiving dinner; she and M-K- hit it off and exchanged phone numbers; M-K- called that evening to make sure she got home all right and asked her out; she found him smart, patient, tall, handsome, and respectful but found it odd that he asked her to pay because he was not working; they dated for about a year; M-K- found stable work; and on her birthday, November 25, he proposed. The petitioner noted that she said yes right away and was happy and when she discussed the proposal with her aunt, her aunt pointed out that she was not getting any younger. The petitioner also declared that: they married in the presence of one of her friends and one of his friends; invited friends over to their apartment after the ceremony to celebrate; the first few months of the marriage went very well; they furnished their apartment nicely; they were in love and everyone could see it; and they visited friends often.

The petitioner noted that at the first interview with an officer of legacy INS in February 20, 1997 regarding M-K-'s Form I-130 that was filed on her behalf, she and M-K- were informed that she had previously been married and were told that they had to come back for a second interview. The petitioner declared that: when they left the immigration building, M-K- "exploded in anger" and accused her of cheating on him; she tried to explain that she did not know the individual that immigration claimed she was married to; and that M-K- told her "that he would do everything possible so that [she] would not be able to get this [I-130] petition approved." The petitioner declared further that: M-K- moved out of their apartment and would only stop by when she was at work to get his things; she received a notice to go to the second immigration interview and that when she arrived M-K- was also there; she thought he would tell the immigration officer that he wanted a divorce and to stop the paperwork but he did not; she answered everything accurately and truthfully; and when the immigration officer called them to speak to them together she realized that M-K- had answered some of the questions wrong on purpose just to mess up her case because he was so angry. The petitioner indicated that after the interview she never heard from M-K- again and never heard from the attorney who had filed M-K-'s Form I-130 on her behalf. The petitioner stated that she did not receive a denial letter and did not know until much later that she had been given a date to go to immigration court.

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<sup>6</sup> The bills indicate that the apartment at this address is either apartment #1 or apartment #2.

The petitioner stated that she entered into her marriage with M-K- with the best of intentions, with love, admiration, and respect and that she wanted to have a family with M-K- and that they had big plans together but their relationship did not work out.

The record also includes a May 19, 2010 declaration signed by Rosa Plomer who declared that: she and the petitioner were roommates for about five years until the petitioner met and married M-K-; during the time the petitioner and M-K- were together they seemed very happy; she and the petitioner would visit but the petitioner did not talk about issues that made her sad or unhappy; and in 1998, the petitioner moved back in with her and started the divorce process against M-K-. The record further included a May 20, 2010 statement signed by Lidia Bautista who declared that; the petitioner told her in 1995 that she was in love with M-K-; she was one of the witnesses at the petitioner's civil wedding ceremony; and she was a frequent visitor at their place.

The transcript of the petitioner's September 8, 1997 statements under oath with an immigration officer and the petitioner's statement in response to the director's NOID in this matter contain several significant inconsistencies.

The first inconsistency concerns the couple's living arrangements at the time of the September 8, 1997 Stokes interview. In this interview, the petitioner declared that: neither she nor M-K- ate the morning of the interview; they ordered and ate Chinese food together the previous evening; and the couple slept in specific nightclothes the night before the interview. However, in the petitioner's response to director's April 2010 NOID, she declared that that M-K- moved out of their apartment after the initial February 20, 1997 immigration interview, and he would not talk to her or look at the proof she had that she had not been married before.

The second inconsistency concerns the petitioner's wedding to M-K-. In the September 8, 1997 Stokes interview, the petitioner declared that there were no witnesses to her marriage to M-K- at City Hall and that they went home after the ceremony. In contrast, the petitioner stated in her response to the director's NOID that she and M-K- each had a friend attend the wedding ceremony with them and they had a party at their home after they married. The petitioner also submitted statements from [REDACTED] attesting to their presence at the wedding.

The third inconsistency concerns her claim of the events that transpired after the initial February 1997 interview. The petitioner stated in her May 27, 2010 response to the director's NOID that after the initial February 1997 interview, she never heard from their attorney, [REDACTED] again, and that he had changed offices. She also declared that she did not know until she was given a date to go to immigration court that the Form I-130 petition filed by M-K- on her behalf had been denied. Contrary to the petitioner's claims, the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner on January 15, 1998 authorizing [REDACTED] to represent her. The record also contains a Form EOIR-29, Notice of Appeal to the BIA, also signed by the petitioner on January 15, 1998, and listing her address in care of [REDACTED]. The EOIR-29 was filed to appeal the denial of the Form I-130 that M-K- had filed on her behalf. As the petitioner was placed into immigration proceedings in August

2001 and the filing of the BIA appeal occurred in January 1998, the petitioner's statement that she was unaware of the denied Form I-130 is patently false. Also false is her statement that she never heard from [REDACTED] again after the February 1997 interview, as the record contains a Form G-28 signed by her on January 15, 1998, which authorized [REDACTED] to represent her.

The petitioner's inconsistent statements regarding her living arrangements with M-K-, their wedding ceremony, and her interactions with [REDACTED] greatly undermine her overall credibility and call into question the bona fide nature of her marriage to M-K-.

In addition, the documentation that the petitioner submitted to establish the bona fide nature of her marriage to M-K- is insufficient. The record includes IRS Forms that are uncertified and contradict each other. For example, the 1995 IRS Form 1040EZ shows that M-K- was single on one version and was married on a second version. The IRS 1995 Form W-2 shows the W-2 was sent to M-K-'s mother's address as does M-K-'s learner permit issued in 1996. M-K-'s 1996 IRS Form W-2 shows his address as [REDACTED] a time when the petitioner claims the couple resided together at the [REDACTED]. The one-year lease and rental receipts are insufficient and the NYNEX documents are not addressed consistently to the couple at a particular dwelling. The savings account established for the couple on September 26, 1996, almost a year subsequent to the marriage, does not establish that the couple intended to establish a life together. The statements of [REDACTED] do not include probative details regarding the petitioner's relationship with M-K- and do not describe particular incidents where they witnessed the alleged bona fides of the petitioner's marital relationship. Moreover, [REDACTED]'s statement contradicts the petitioner's sworn testimony that neither she nor M-K- had other individuals at their civil wedding, which calls into question the veracity of their statements. When viewed in its totality, the evidence is substantial and probative that the petitioner's marriage to M-K- was an attempt to be accorded immediate relative status for the purpose of evading the immigration laws. Accordingly, section 204(c) of the Act bars approval of the instant petition.

### *Conclusion*

The director's determination that the petitioner did not have a qualifying relationship with the claimed abusive spouse is withdrawn. However, the petition is not approvable as section 204(c) of the Act is applicable in this matter based upon the petitioner's attempt to be accorded immediate relative status as the spouse of a U.S. citizen through one fraudulent marriage and an attempt to enter another marriage to evade the immigration laws. Accordingly, the matter is remanded to the director to entry a new decision into the record. 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.

**ORDER:** The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.