

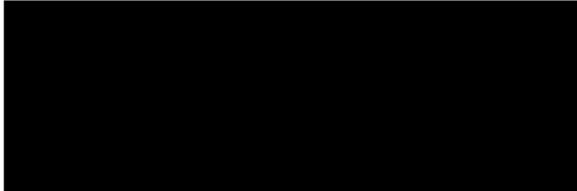
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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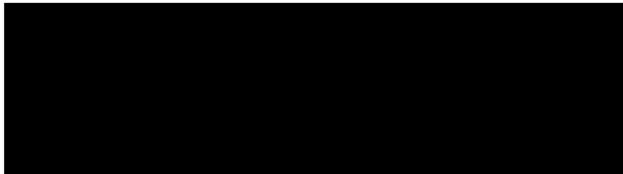


IN RE: Petitioner:



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, 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 under section 204(a)(1)(A)(iii) of 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 denied the petition because the petitioner failed to establish that he is a person of good moral character and he failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to his entry into a prior marriage for the purpose of evading the immigration laws.

On appeal, counsel submits a supplemental 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, 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:

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].

* * *

(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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Egypt who was admitted to the United States on July 20, 2002 as a B-2 nonimmigrant visitor. On March 13, 2003, the petitioner married T-J-, a U.S. citizen, in Torrance,

California.¹ T-J- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she withdrew on June 21, 2003. On April 22, 2003, the petitioner was issued a notice to appear in removal proceedings for remaining in the United States beyond his authorized period of stay.² The petitioner's marriage to T-J- terminated in a divorce on April 30, 2004. The petitioner then married J-A-, a U.S. citizen, on August 9, 2004. The petitioner's second wife subsequently filed a Form I-130 petition on his behalf. The petitioner's marriage to J-A- was terminated in a divorce on July 19, 2006.

The petitioner filed this Form I-360 on February 29, 2008 based on his relationship with J-A-. The director subsequently issued two Requests for Evidence (RFEs) of the petitioner's good moral character. The second RFE also requested documentation of the petitioner's entry into marriage with J-A- in good faith. The petitioner, through counsel, responded with further documentation. On July 13, 2010, the director issued a Notice of Intent to Deny (NOID) explaining that the petition would be denied because the petitioner failed to establish that he is a person of good moral character and he was subjected to battery or extreme cruelty by J-A-. The director further determined that sections 204(g) and 204(c) of the Act barred approval of the petition. The director found that the petitioner was subject to section 204(g) of the Act, 8 U.S.C. § 1154(g), for marrying J-A- while in removal proceedings and failing to establish eligibility for the bona fide marriage exemption to this bar. The director found that the petitioner was subject to section 204(c) of the Act for entering into his first marriage with T-J- for the purpose of evading the immigration laws. The petitioner responded to the NOID with additional evidence, which the director found insufficient to fully establish the petitioner's eligibility. On December 27, 2010, the director determined that although the petitioner established the requisite battery/extreme cruelty and his good-faith marriage to J-A-, he failed to overcome the bar to the approval of his petition under section 204(c) of the Act and establish that he is a person of good moral character. The director denied the petition on these two grounds. The petitioner, through counsel, filed a timely appeal.

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, including the evidence submitted on appeal, fails to fully establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not fully overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

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

¹ Name withheld to protect individual's identity.

² On August 28, 2010, the petitioner's removal proceedings were administratively closed at the Los Angeles Immigration Court pending the adjudication of his Form I-360.

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)(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).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). 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. *Id.* at 387.

In denying the petition, the director stated that the record reflects that during the petitioner's National Security Entry-Exit Registration System (NSEERS) interview he testified that he remained in the United States beyond his authorized period of stay because he was in love and wanted to stay with his future wife. The director noted that the petitioner indicated during the NSEERS interview that a petition had been filed on his behalf and he knowingly violated the term of his visitor status. The director then discussed the alien relative petition withdrawal letter from the petitioner's first wife, T-J-, in which she stated, "I am not married to [the petitioner], have never been married, I have never seen him before." The director also noted that on the instant Form I-360, the petitioner stated that he began residing with his second wife, J-A-, in April 2003, less than one month after his marriage to T-J-. The director determined that the petitioner's marriage to T-J- was entered into for the sole purpose of obtaining an immigration benefit because of these issues combined with the petitioner's failure to provide any probative details or supporting evidence regarding their relationship.

On appeal, counsel asserts that the petitioner and his first wife, T-J-, separated soon after their marriage

when they realized that they could not resolve their differences. Counsel states that the petitioner appeared for the NSEERS registration process after he requested the assistance of an immigration preparer, O-M-. Counsel contends that O-M- submitted forms to USCIS without the petitioner's consent or knowledge. Counsel asserts that the Immigration and Customs Enforcement (ICE) agents who conducted the NSEERS interview made false statements on behalf of the petitioner indicating that the petitioner was remaining in the United States "for love." Counsel states that the director's analysis of the petitioner's first marriage relies on the couple's conduct after marriage and not at the time of marriage. Counsel contends that T-J-'s statement is contradictory and should not be seen as reliable evidence. Counsel asserts that USCIS abused its discretion when the director failed to consider the petitioner's claims that he was coerced to give information during his NSEERS interview and had problems with translation. Counsel concludes that the director dismissed the petitioner's affidavit to establish his good-faith marriage and the ineffective representation of O-M- without providing a reason for the negative credibility finding.

The affidavit referred to by counsel is a sworn declaration from the petitioner submitted in response to the NOID. In the declaration, dated August 10, 2010, the petitioner stated that he thought that O-M- was an attorney, but he was actually "an imposter and not an attorney." The petitioner claimed that O-M- told him that he needed to sign blank forms for his NSEERS registration. He stated that he "never knew that these were forms for a Green Card or for anything not related to NSEERS." The petitioner noted that O-M- was later convicted of an offense and sentenced to two years imprisonment. The petitioner asserted that during his NSEERS interview he never testified that he was staying in the United States "for love" and his "future wife." He stated that at the time of the interview, his English was poor and he was denied a translator. He alleged that he was "put in a very abusive and threatening position by the Immigration officers" while being questioned. The petitioner asserted that he "should not be held responsible for statements that [he] never made."

In regard to his relationship with his first wife, the petitioner stated that he wed T-J- on March 13, 2003 in Torrance, California. He recalled, "[w]e quickly realized that we could not be compatible and live together as husband and wife, so we separated shortly after marriage." He stated that he communicated with T-J- a few times over the telephone but they could not resolve their differences. The petitioner noted that since they were married for a very short period of time before separating, he does not have any evidence showing that he resided with T-J-. The petitioner stated that the withdrawal statement from T-J- does not show that she was the person who made or signed the statement. He asserted that the immigration officers who obtained the statement from T-J- "probably threatened her." The petitioner stated that he and T-J- know each other and they were both present for their wedding ceremony. He noted that they also signed their divorce filing in front of a notary. The petitioner contended that he does not know if the immigration forms filed by O-M- on his behalf were actually signed by T-J-. The petitioner indicated that he wants to amend his Form I-360 and change the date of his residence with his second wife, J-A-, as starting in late July 2003 or early August 2003.

Even if we completely disregard the statements made by the petitioner during his NSEERS interview, we find that the petitioner has not met his burden of proof in establishing his good-faith entry into marriage with T-J-. As an initial matter, we find unpersuasive the petitioner's assertion that he had no knowledge that O-M- filed an adjustment application (Form I-485) on his behalf based upon an underlying alien relative petition (Form I-130) submitted by T-J-. The Form I-485 and corresponding

Biographic Information Sheet (Form G-325A) contain the petitioner's signatures. The petitioner also signed an Application for Employment Authorization (Form I-765), which was submitted with his adjustment application. The petitioner does not deny that his actual signature is on these forms. The petitioner's assertion that he does not know if [REDACTED] actually signed the Form I-130 is rebutted by the fact that the same signature from [REDACTED] is on the notarized Affidavit of Support (Form I-864) she filed on behalf of the petitioner as well as her driver's license and their marriage certificate. These documents show that the petitioner and [REDACTED] jointly signed immigration forms shortly after their marriage for the petitioner's adjustment to permanent residence.

Counsel's claim that the director's analysis of the petitioner's first marriage relies on the couple's conduct after marriage and not at the time of marriage is unsupported by the record. The petitioner provided no documentation of his good-faith entry into marriage with [REDACTED] and no such materials were submitted with the Form I-130 petition. In his declaration, the petitioner states that he does not have evidence of his residence with [REDACTED] because they resided together for only a short period of time. However, he does not provide any explanation of his inability to obtain further evidence from, for example, third parties regarding his good-faith entry into marriage with [REDACTED]. The petitioner also provides no detailed testimony of his own or from other individuals regarding how he met [REDACTED] their courtship, wedding ceremony, shared residence and their shared experiences.

We acknowledge that failure to produce affirmative evidence of the bona fides of a marriage, by itself, is not sufficient to establish that the marriage is fraudulent pursuant to section 204(c) of the Act. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B) *with* 8 C.F.R. § 204.2(a)(1)(ii). However, in this case, the record contains a withdrawal letter, dated June 21, 2003, from [REDACTED] in which she stated, "I am not married to [the petitioner], I have never been married, I have never seen him before." Although [REDACTED] statement may appear inconsistent with the fact that she actually wed the petitioner, the content of her statement indicates that she never had a true marital relationship with the petitioner. The withdrawal letter is a sworn statement signed by [REDACTED] that was taken before an immigration officer and a witness. The signature on the withdrawal letter is reliable as it matches the signature on T-J-'s driver's license. This evidence combined with the petitioner's failure to provide documentation or probative testimony of the bona fides of his first marriage indicates that the petitioner's marriage to T-J- was entered into for the purpose of evading the immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

Eligibility for immigrant classification

Beyond the director's decision, the petitioner has also failed to demonstrate that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(c) of the Act.³ Consequently, the petitioner

³ 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).

has not demonstrated that he is eligible for immigrant classification as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in March 2005 and ending in March 2008). The director determined that a finding of good moral character could not be made in the instant petition because the petitioner had not submitted a final disposition of his December 22, 2008 arrest for theft of utility services and conspiracy to commit a crime.

The record reflects that the petitioner has resided in California since his July 20, 2002 entry into the United States. The petitioner submitted in response to the NOID, a California Department of Justice criminal history record, dated March 9, 2010. The criminal history record shows that the petitioner was convicted of the following offenses: driving without a license on July 1, 2005; driving without a license on August 29, 2005; exceeding speed on a highway and driving without a license on March 21, 2008; and driving under the influence of alcohol and driving while license suspended on April 22, 2008. The criminal history record also shows that the petitioner was arrested in Riverside County, California on December 12, 2008 for burglary, theft of utility services and conspiracy to commit a crime. The criminal history record, however, does not reflect the final disposition of the charges.

In a declaration, dated May 13, 2010, the petitioner stated that he was arrested in December 2008 at his workplace as a result of his co-worker stealing electricity from a neighboring business to power his small appliances. The petitioner claimed that he was never charged with the crime and the Riverside criminal court does not have any records related to this arrest. The petitioner indicated that he is "deeply apologetic" for driving without a license and driving under the influence of alcohol and does not want to make the same mistakes again. He asserted that he has "tried to be [a] responsible and honest man." The petitioner submitted a Superior Court of California, County of Riverside, certified criminal court records search indicating that a search was conducted by the deputy clerk under the petitioner's name and date of birth for the years 1992 until March 16, 2010, and the clerk could not locate any records.

On appeal, counsel asserts that the petitioner was not convicted or charged with theft of utility services. Counsel states that the petitioner has conducted a search with the Superior Court of California, Los Angeles and with the California Department of Justice, which have revealed no record of conviction for theft of utility services. Counsel contends that the petitioner does not possess any criminal convictions that would preclude a finding of good moral character.

We find that the petitioner has established that he is a person of good moral character. As stated by 8 C.F.R. § 204.2(c)(1)(vii), a self-petitioner's claim of good moral character will be evaluated on a

case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. The petitioner's convictions for driving without a license, driving while license suspended, exceeding speed on a highway and his one conviction for driving under the influence of alcohol do not fall within any of the enumerated bars to a finding of good moral character under section 101(f) of the Act. Nor do his convictions evidence actions that fall below the standards of the average citizen in the community. The petitioner's last convictions on his criminal history record were in April 2008 for driving while license suspended and driving under the influence of alcohol. The petitioner submitted evidence that on February 3, 2009 he completed an alcohol or drug education program in compliance with the terms of his sentencing for these offenses. The record does not show that the petitioner has been convicted of any other offenses since April 2008.

While the record does indicate that on December 12, 2008 the petitioner was arrested in Riverside County for burglary, theft of utility services and conspiracy to commit a crime, the petitioner has met his burden of proof to demonstrate that he was not convicted of these offenses. The criminal history report from the California Department of Justice does not reflect a final disposition for the arrest and the petitioner obtained a certified records search from the Superior Court of California, County of Riverside showing that records under the petitioner's name and date of birth could not be located. These documents support the petitioner's assertion that he was not indicted and convicted of these charges. Accordingly, the petitioner has established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that he is a person of good moral character. However, approval of this petition is barred by section 204(c) of the Act because the record demonstrates that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. In addition, the petitioner has failed to demonstrate that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(c) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In immigrant 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.