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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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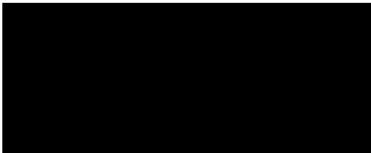
Date: **OCT 13 2011**

Office: VERMONT SERVICE CENTER File: 

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)

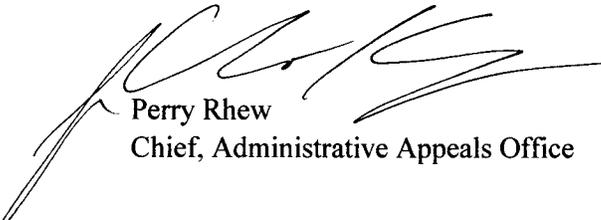
ON BEHALF OF PETITIONER:



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, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

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 U.S. citizen spouse.

The director determined that the petitioner is subject to the section 204(c) of the Act, 8 U.S.C. § 1154(c), bar to the approval of her petition because she attempted to enter into a prior marriage for the purpose of evading the immigration laws.

On appeal, counsel submits a supplemental brief.

Relevant Law and Regulations

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 further 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)(iv), which states, in pertinent part: “*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.”

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who stated that she married her first husband, C-W-, on December 5, 1981.¹ She obtained a divorce from C-W- on December 21, 2001 in Kings County, New York. The petitioner last entered the United States on August 7, 2003, as a nonimmigrant

¹ Name withheld to protect the individual’s identity.

visitor. She married her second husband, C-B-, a U.S. citizen, on June 23, 2007 in [REDACTED]

The petitioner filed the instant Form I-360 on August 31, 2009. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, her husband's battery or extreme cruelty and their shared residence. The petitioner, through counsel, timely responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) based on the section 204(c) of the Act bar to the approval of an immigrant petition for individuals who have previously sought to be accorded immediate relative status by way of a marriage entered into for the purpose of evading the immigration laws. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director found this additional evidence insufficient to establish the petitioner's eligibility, and denied the petition under section 204(c) of the Act. Counsel filed a timely appeal.

On appeal, counsel submits a supplemental brief and the evidence previously filed in response to the NOID.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The sole issue on appeal is the petitioner's eligibility for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. The director made a specific finding in his January 18, 2011 decision that all other grounds of eligibility had been satisfied and we find no error in that determination. Counsel's claims and the evidence resubmitted on appeal have overcome the director's grounds for denial and the appeal will be sustained 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 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)(1)(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). U.S. 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 reflects that on September 27, 1995, an individual claiming to be a U.S. citizen by birth, D-W-, filed an alien relative petition (Form I-130) on behalf of the petitioner as her spouse and the petitioner filed a corresponding adjustment application (Form I-485). A birth certificate for D-W- and a marriage certificate for D-W- and the petitioner were submitted as supporting documentation. On October 14, 1996, the director denied the Form I-130 petition with a determination that the marriage certificate and U.S. birth certificate were fraudulent.

In denying the instant Form I-360, the director acknowledged that no actual marriage took place between the petitioner and D-W-. The director, however, noted that on the petitioner's Form I-485, she stated that she was married to D-W- and on her biographic information sheet (Form G-325A) she stated that she married D-W- on December 12, 1994. The director further noted that a marriage certificate was submitted with the Form I-130 confirming the petitioner's attempted marriage to D-W- on December 12, 1994. The director concluded that the record established that the petitioner conspired to enter into a marriage with D-W- for the purpose of evading the immigration laws, and denied the petition under section 204(c)(2) of the Act.

On appeal, counsel asserts that in the mid-1990s, the petitioner and her first husband attempted to file religious worker petitions with the assistance of individuals from a workshop she attended at [REDACTED]. Counsel states that the petitioner does not know, and has never met or spoken with, D-W-. Counsel contends that because the petitioner was never actually married to D-W-, pursuant to the Board of Immigration Appeals (BIA) holdings in *Matter of Concepcion* and *Matter of Anselmo*, the Form I-130 cannot serve as a basis to deny the instant petition.² Counsel submitted two news articles discussing the immigration services that were offered by Church Alive in 1995 and two news articles about immigration fraud perpetrated against illegal aliens in New York.

In the affidavit filed in response to the NOID, dated September 22, 2010, the petitioner claimed that she does not know how the alien relative petition was filed on her behalf based on a marriage to D-W-. She asserted that she was married to her first husband, C-W-, at the time of the petition and she does not recall signing any documents stating that she was married to D-W-. The petitioner noted that she does

² Counsel further asserts that the petitioner is not inadmissible under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for the willful misrepresentation of a material fact. However, a petitioner's admissibility to the United States is not an eligibility criterion for the approval of the instant petition. These proceedings are limited to the petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petitioner's admissibility will be addressed by the director during the adjudication of her adjustment of status application (Form I-485).

recall attending a meeting at [REDACTED] after learning that she and C-W- could be eligible for immigration benefits as religious workers through the church. She stated that she believes C-W- paid a representative from the church to help them with their immigration applications. She asserted that since C-W- was abusive she allowed him to take charge of the immigration process. The petitioner recalled that she believed that the immigration paperwork was being completed for her and C-W- to obtain religious worker visas. She asserted that she had no reason to think that her immigration application would be based on a marriage to a man she had never heard of. The petitioner recalled that after she could no longer get in touch with the representative from [REDACTED], she spoke with a reverend at the church and learned that the representative was in jail, possibly for fraud.

We note that counsel has not addressed the second provision of section 204(c) of the Act. Counsel relies only on *Matter of Concepcion*, 16 I. & N. Dec. 10 (BIA 1976) and *Matter of Anselmo*, 16 I. & N. Dec. 152 (BIA 1977), both of which held that in the absence of an actual marriage, section 204(c) of the Act does not apply. However, the BIA issued *Concepcion* and *Anselmo* prior to the Marriage Fraud Amendments of 1986, the statute that incorporated the second subsection of 204(c) into the Act. Section 204(c)(2) of the Act does not require an actual marriage, but an attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws. The evidence of an attempt or conspiracy must be documented in the alien's file and must be substantial and probative. *Matter of Tawfik*, 20 I&N Dec. 166, 167.

The director in the instant case concluded that section 204(c)(2) of the Act bars approval of the petition because the petitioner conspired to enter into a marriage with D-W-. The director cited to the petitioner's Form I-485, where the petitioner stated that she was married to D-W- and her biographic information sheet (Form G-325A) where she stated that she married D-W- on December 12, 1994. In *Matter of [REDACTED]* the BIA noted that when the petitioner agreed to marry the beneficiary in exchange for \$1,000, so that the beneficiary would not have to return to [REDACTED], the beneficiary had at that point "attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." 19 I&N Dec. 803, 807 n.3 (BIA 1988). The BIA, however, also noted that no evidence was submitted to rebut these facts or establish that the visa petition was filed without the knowledge or approval of the beneficiary. 19 I&N Dec. 803, 805-06. Here, the petitioner claims to have no knowledge that a Form I-130 was filed on her behalf by D-W-, and she asserts that an immigration consultant had her sign immigration forms under the pretense of filing a religious worker visa. In her affidavit, the petitioner pointed to several inconsistencies in the Form I-485 and Form G-325A to establish that she had no knowledge of the fraudulent filings. She stated that the Forms provide her address as [REDACTED] but she has never resided at that address. She noted that the Form G-325A lists her occupation as self-employed or as a cashier, but she has worked for a school or a service company as a teacher or home health aide since 1982. She also noted that the applications, which state that she was married to D-W- with no prior marriages, were filed and signed under the name she used while married to C-W-.

We find that the petitioner has demonstrated that she did not attempt or conspire to enter into a marriage with D-W- for the purpose of evading the immigration laws. The petitioner explained how she has never met D-W- and she was married to her first husband at the time the alien relative petition was filed on her behalf by D-W-. It is unclear whether D-W- is, in fact, the actual identity of a person because the birth certificate submitted on behalf of an individual named "D-W-" was

determined by the former Immigration and Naturalization Service (INS) to be fraudulent. The petitioner explained in detail how an "immigration consultant" prepared paperwork for her and her former husband under the pretense of applying for religious worker visas. She has offered a reasonable explanation of her lack of knowledge of the filing of the alien relative petition and adjustment application. The petitioner's explanation is detailed, credible and supported by the record as the signatures on the Form I-485 and Form G-325A do not resemble the signatures on the petitioner's Form I-360, employment authorization card, affidavits and social security card. An independent and de novo review of the relevant evidence establishes that the petitioner did not conspire to enter into a marriage with D-W- for the purpose of evading the immigration laws and section 204(c) of the Act does not bar approval of this petition. Accordingly, the petitioner has demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

The petitioner has established her eligibility for immediate relative classification. The AAO concurs with the director's determination that the petitioner meets all the remaining statutory requirements. Accordingly, the petitioner has demonstrated that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The January 18, 2011 decision of the service center director is withdrawn. The appeal is sustained and the petition is approved.