



U.S. Citizenship  
and Immigration  
Services

B9

[REDACTED]

Date: DEC 03 2012 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED]

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:

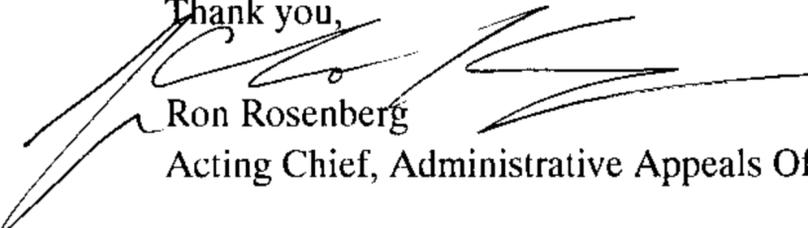
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director (the director) initially denied the immigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter for entry of a new decision, as the petition was not approvable. The matter is again before the AAO based upon the director's certification of his subsequent adverse decision. The director's decision will be affirmed and the petition will remain 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.

### *Facts and Procedural History*

As the facts and procedural history were adequately documented in our prior decision, we shall repeat only certain facts as necessary here. 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. In its March 8, 2011 decision, the AAO withdrew the director's determination that the petitioner did not have a qualifying relationship with her U.S. citizen spouse, but remanded the matter for entry of a new decision because section 204(c) of the Act barred approval of the instant petition (Form I-360). On remand, the director issued a Request for Evidence (RFE) on February 13, 2012, to which counsel responded. On August 20, 2012, the director determined that counsel's response to the RFE failed to overcome his findings that the petitioner entered into her marriages with [REDACTED] and [REDACTED] for the purpose of evading the immigration laws and, therefore, section 204(c) of the Act barred approval of the petition. In his notice of certification, the director informed the petitioner that she had 30 days to supplement the record with a brief that she wished the AAO to consider. As of this date, however, we have not received any brief or additional statement from counsel or the petitioner.

### *Applicable Law*

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, or
- (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.

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<sup>1</sup> Names withheld to protect identity.

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). 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).

#### *Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As detailed in our March 8, 2011 decision, our independent review of the record established that there was substantial and probative evidence that the petitioner attempted or conspired to enter into a marriage with [REDACTED] for the purpose of evading the immigration laws. We also determined that substantial and probative evidence existed to demonstrate that the petitioner's marriage to [REDACTED] was accomplished for the purpose of evading the immigration laws.<sup>2</sup> Since the time of our last decision, the petitioner has submitted no additional evidence sufficient to overturn our prior findings.

In response to the director's February 13, 2012 RFE, counsel asserted that section 204(c) of the Act did not apply because no actual or attempted marriage existed between the petitioner and [REDACTED]. Counsel's assertion is not supported by the record. Although the petitioner claimed that she was unaware that her 1994 application was based on a purported marriage to [REDACTED] her May 27, 2010 affidavit does not provide a substantive explanation of the circumstances surrounding her 1994 application that is sufficient to rebut the substantial and probative evidence that she attempted or conspired to enter into a marriage with [REDACTED] to evade the immigration laws and obtain lawful permanent residency. The record contains a fraudulent New York City marriage certificate of the petitioner and [REDACTED] as well as the petitioner's Forms I-485 (application to adjust status) and G-325A (biographic information) upon which the petitioner asserted her marriage to

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<sup>2</sup> As our prior decision detailed the evidence we considered, we shall not repeat our findings here.

and signed in 1994. Although the petitioner had an opportunity to address our prior findings in response to the notice of certification, she has failed to provide any statement or other evidence to rebut our prior determinations.

The approval of this petition is also barred under section 204(c) of the Act based upon the petitioner's entry into a marriage with to evade the immigration laws. Counsel asserted in response to the director's RFE that "there is certainly not clear and convincing evidence that the marriage was a sham." Counsel, however, misstates the standard of proof in this matter, which is "substantial and probative evidence of . . . an attempt or conspiracy" to evade the immigration laws. 8 C.F.R. § 204.2(a)(ii). Although counsel states that the record at worst is equivocal as to the bona fides of the petitioner's relationship with she fails to specifically identify an erroneous statement of fact or law in our prior decision, and does not address our specific evidentiary findings. Counsel's assertion that the petitioner and explained their inconsistent testimony at their immigration interview is unsupported by the record. While the petitioner has had an opportunity to supplement the record in these proceedings in response to the notice of certification, she has failed to present any additional evidence or statement.

### *Conclusion*

Section 204(c) of the Act bars the approval of this Form I-360 because the record contains substantial and probative evidence that the petitioner, on two separate occasions, attempted to procure lawful permanent residency through fraud by first purporting to be the spouse of when no marriage took place, and then by marrying solely to evade the immigration laws.

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 director's August 20, 2012 decision is affirmed. The petition remains denied.