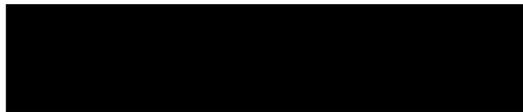


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

Date: OCT 16 2012

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

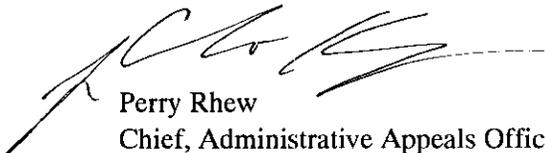
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident 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, the petitioner submits a supplemental letter.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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.”

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, . . . preference status as the spouse of a[n] . . . alien lawfully admitted for permanent residence, 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States on August 27, 1995 as a B-2 visitor. The petitioner married her former husband J-W-¹, a lawful permanent resident, in ██████████ on March 15, 1997. The petitioner filed the instant Form I-360 on October 13, 2010. The director subsequently issued a Notice of Intent to Deny (NOID) based primarily 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 preference status by way of a marriage entered into for the purpose of evading the immigration laws. The petitioner 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. The petitioner timely appealed.

On appeal, the petitioner submits a supplemental brief.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record and the petitioner's brief submitted on appeal, the petitioner has overcome the director's ground for denial and the appeal will be sustained for the following reasons.

Section 204(c) of the Act

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

¹ Name withheld to protect individual's identity.

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 May 22, 1995, an individual claiming to be a U.S. citizen by birth, M-B-², 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 M-B- and a marriage certificate for M-B- and the petitioner were submitted as supporting documentation. On July 22, 1996, the New York District Director denied the Form I-130 petition for failure to appear at the scheduled interview.

In the NOID, the director noted that on the petitioner's Form I-485, she stated that she was married to M-B- and on her biographic information sheet (Form G-325A) she stated that she married M-B- on December 30, 1994. The director further noted that a marriage certificate was submitted with the Form I-130 confirming the petitioner's marriage to M-B- on December 30, 1994. The director noted that the marriage certificate contains errors and appears to have been altered. The director concluded that the record established that the petitioner conspired to enter into a marriage with M-B- for the purpose of evading immigration laws, and denied the petition under section 204(c)(2) of the Act. The director further concluded that the petitioner provided false testimony in her subsequent adjustment of status interview as the spouse of J-W- when she claimed that she had never before filed for adjustment of status. In the denial of the Form I-360, the director affirmed the determinations regarding section 204(c)(2) made in the NOID.

On appeal, the petitioner asserts that she only became aware of the alleged fraud when she attended her adjustment of status interview with her husband J-W-. She states that when she first came to the U.S., she went to an agency that had assisted a former friend. She stated that with the help of the person who ran the agency, she filled out some forms in order to "file an application for sponsorship." When she returned to the office to renew her work authorization, the office was empty with no forwarding address. The petitioner states that she requested a copy of her file through the Freedom of Information Act (FOIA) and discovered that none of the forms she filled out had been submitted. The petitioner states that she does not know, and has never met or spoken with, M-B-. She reiterates that she had no knowledge of the Forms I-130 and I-485 submitted on her behalf as the spouse M-B- and references the [REDACTED] search showing that she did not, in fact, marry M-B-. She asserts that she was single at the time and was in no way involved in trying to "perpetrate a fraud against the Immigration Department or the government of the United States."

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. at 167.

² Name withheld to protect individual's identity.

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 M-B-. The director cited to the petitioner's Form I-485, where the petitioner stated that she was married to M-B- and her biographic information sheet (Form G-325A) where she stated that she married M-B- on December 30, 1994.

In *Matter of Kahy*, the Board of Immigration Appeals (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. *Id.* at 807. Here, the petitioner claims to have no knowledge that a Form I-130 was filed on her behalf by M-B-, and she asserts that an immigration attorney had her sign immigration forms under the pretense of filing for work authorization. In her brief on appeal, the petitioner states that the signatures on the Form I-485 and Form G-325A do not belong to her.

On appeal, the petitioner has demonstrated that she did not attempt or conspire to enter into a marriage with M-B- for the purpose of evading the immigration laws. The petitioner explained how she has never met M-B- and how she went to an agency to obtain work authorization. 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, Form I-290B, letters, and her old passport. An independent and de novo review of the relevant evidence establishes that the petitioner did not conspire to enter into a marriage with M-B- 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 classification as the spouse of a lawful permanent resident, as required by section 204(a)(1)(B)(ii)(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 immigrant classification under section 203(a)(2)(A) of the Act. 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)(B)(ii) 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 December 6, 2011 decision of the director is withdrawn. The appeal is sustained and the petition is approved.