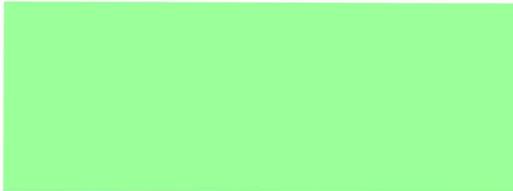


(b)(6)

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



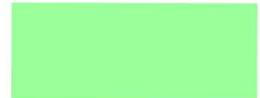
U.S. Citizenship  
and Immigration  
Services



Date:

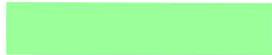
**JUN 29 2013**

Office: VERMONT SERVICE CENTER File:



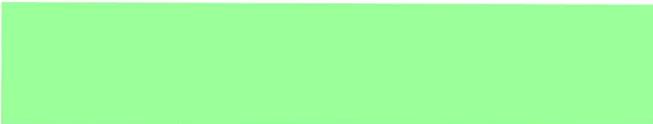
IN RE:

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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting 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 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 did not establish that her former spouse subjected her to battery or extreme cruelty. In addition, the director determined that the petitioner had 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 her attempt to enter into a prior marriage for the purpose of evading the immigration laws.

On appeal, the petitioner, through counsel, submits a 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). An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

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 Kazakhstan who entered the United States on July 25, 2003 on a J-1 nonimmigrant visa. The petitioner married her former husband A-K<sup>1</sup>, a United States citizen, in Alexandria, Virginia on December 15, 2007. The petitioner filed the instant Form I-360 on February 14, 2011. The director subsequently issued a Request for Evidence (RFE) 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 director also issued the RFE of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded to the RFE with additional evidence. The director found this additional evidence insufficient to establish the petitioner's eligibility, and denied the petition because the petitioner is subject to the bar under section 204(c) of the Act and she failed to establish that she was subjected to abuse by her former husband. The petitioner timely appealed.

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 counsel's brief submitted on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

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<sup>1</sup> Name withheld to protect individual's identity.

*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 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 August 23, 2006, S-A-<sup>2</sup>, a U.S. citizen, filed an alien relative petition (Form I-130) on behalf of the petitioner as his spouse and the petitioner filed a corresponding adjustment application (Form I-485). On September 14, 2007, the Charleston Field Office issued a Notice of Intent to Deny (NOID) the Form I-130 petition pursuant to section 204(c) of the Act because USCIS records showed that the petitioner's marriage to S-A- was entered into for the purpose of evading the immigration laws. S-A- did not respond to the NOID and the Form I-130 petition was denied due to abandonment. In his decision, the field office director also determined that the petitioner conspired to enter into a marriage with S-A- for the purpose of evading immigration laws.

The petitioner filed the instant Form I-360 on February 14, 2011 based on her relationship with her second husband, A-K-. The director subsequently issued an RFE for proof that the petitioner's prior marriage to S-A- was bona fide and not entered into for purposes of evading immigration laws. The petitioner failed to respond with further documentation and on October 22, 2012, the director affirmed the determinations regarding section 204(c)(2) of the Act made in RFE and also determined that the petitioner failed to establish the requisite abuse.

On appeal, counsel asserts that USCIS erred in extending the scope of the bar of section 204(c) to battered or abused spouses seeking relief under the Violence Against Women Act (VAWA). Counsel cites to a ninth circuit case, *Matter of Virk v. INS*, 295 F.3d 1055 (9<sup>th</sup> Cir. 2002) as an example that the 204(c) bar can be waived; however, *Virk* discussed the applicability of section 204(c) of the Act to an individual who was previously granted a waiver of deportability under former section 241(f) of the Act. The facts in *Virk* are distinguishable from the facts in the instant petition and, therefore, the holding in *Virk* is not applicable. In addition, this petition is not under the jurisdiction of the Ninth Circuit. Although the reasoning underlying a circuit court's decision will be given due consideration when the issue it addresses is properly before the AAO, the analysis does not have to be followed as a matter of law. *See Matter of Anselmo*, 20 I&N Dec. 25,31 (BIA 1989).

Counsel further states that the petitioner maintains that she married S-A- with good-faith intentions. However, no evidence is submitted to overcome the inconsistencies found on the record and the petitioner's prior admission that her marriage to S-A- was fraudulent. Likewise, counsel's arguments fail to establish that the director's determinations were contrary to U.S. law or USCIS policy. A review of the administrative record combined with the petitioner's failure to provide

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

documentation or probative testimony of the bona fides of her first marriage indicates that the petitioner's marriage to S-A- 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.

*Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, letters from family and friends, medical records, police reports, and a letter from [REDACTED]

In her first affidavit, the petitioner stated that after their marriage, A-K- would berate her, call her names, and accuse her of cheating on him. She further stated that when having an argument in the car, he would kick her out of the car and make her walk home. The petitioner also stated that A-K- would repeatedly threaten her with deportation. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about A-K-'s treatment of her. In her second affidavit, the petitioner repeated her earlier statements and added that he would tell her he hated her and threatened to beat her up. She stated that he would lock her out of the house and sometimes hit her. She recounted that the first time he hit her was in January of 2008 when he hit her in the throat for disturbing him in bed. She recounted another event in March of 2008 when he hit her while having an argument about paying a credit card bill. She stated that she bit him on the ear to get away and then called the police although she decided she did not want to talk to them when they arrived. She did not further describe these incidents or provide other probative information to demonstrate that her former husband battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The director correctly determined that the remaining relevant evidence in the record did not establish that the petitioner or her daughter was subjected to battery or extreme cruelty by A-K-. The police reports showed that the petitioner was considered the aggressor during these incidents and failed to identify any abusive behavior by A-K-. Likewise, the medical reports and the letters from the petitioner's family and friends also failed to provide probative details regarding specific incidents of abuse.

On appeal, counsel asserts that the director failed to accord evidentiary weight to certain documents submitted by third parties. Specifically, counsel refers to a letter provided by [REDACTED], the Legal Director for [REDACTED] which is a non-profit organization in the Washington, D.C. area that provides legal and social services to victims of domestic violence. [REDACTED] stated that the petitioner sought legal consultation at [REDACTED] offices on July 14, 2009 as an abused spouse. Ms. [REDACTED] stated that at that time, the petitioner was advised of the Form I-360 requirements. Ms. [REDACTED] further stated that the [REDACTED] did not have further contact with the petitioner but that this was not uncommon with their domestic violence clients. The letter from [REDACTED] did not provide an assessment of the petitioner's case nor did she provide further, substantive information regarding the claimed abuse. No further evidence was submitted on appeal. Accordingly, the petitioner has not

established that her former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

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 not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.