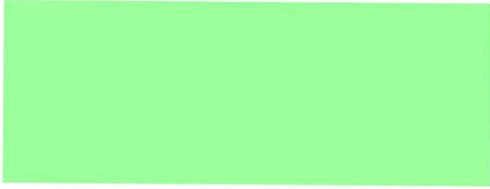




U.S. Citizenship
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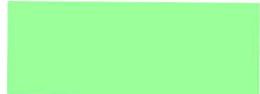
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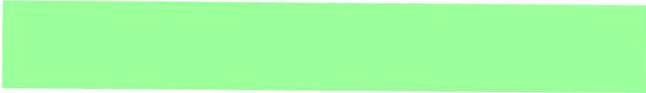
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Office: VERMONT SERVICE CENTER

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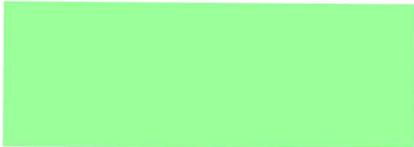


IN RE: Self-Petitioner:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 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 his U.S. citizen spouse.

The director denied the petition because the petitioner entered into a prior marriage to evade the immigration laws and section 204(c) of the Act, 8 U.S.C. § 1154(c) consequently bars approval of his self-petition. On appeal, the petitioner, through counsel, submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 an abusive United States citizen may still self-petition as an abused spouse 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 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 the Dominican Republic who divorced his first wife, L-C¹, in the Dominican Republic on February [REDACTED]. The petitioner entered the United States as a B-1 nonimmigrant visitor on June 1, 1993 and less than one month later, on June [REDACTED] married his second wife, D-O², a U.S. citizen, in New Jersey. On September 21, 1993, D-O- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf which she withdrew on November 30, 1994 providing a sworn statement that she married the petitioner to help him stay in the United States and they never lived together as husband and wife. On September [REDACTED] D-O- and the petitioner divorced. On October 31, 1997, the petitioner was placed into removal proceedings after being charged with remaining in the United States beyond the period authorized by his temporary visa and attempting to procure lawful residence by entering into a marriage with a U.S. citizen solely to procure an immigration benefit. On January 14, 1998, the petitioner's sister, [REDACTED] a U.S. citizen, filed a Form I-130 petition on his behalf. The petition was approved on May 27, 1998 and subsequently revoked on September 10, 2007 upon a finding by U.S. Citizenship and Immigration Services (USCIS) that the petitioner entered into his marriage with D-O- to evade the immigration laws and that pursuant to section 204(c) of the Act, USCIS was precluded from approving the Form I-130. On September 10, 1998, an Immigration Judge granted the petitioner voluntary departure in lieu of removal.

On September [REDACTED], the petitioner married C-D³, a U.S. citizen, in New York. The petitioner departed the United States on January 6, 1999. On April 10, 2000, C-D- filed a Form I-130 on the petitioner's behalf which was approved in error on November 15, 2000. In or about May 2001, the petitioner reentered the United States without inspection, admission or parole. On August 10, 2006, USCIS revoked the Form I-130 filed by C-D- after determining that the petitioner entered into his prior marriage with D-O- to evade the immigration laws, and thus barring pursuant to section 204(c) of the Act the approval of the petition. C-D- appealed the decision to the Board of Immigration Appeals (BIA) which dismissed the appeal on March 16, 2009.

On December 2, 2008, the petitioner filed a Form I-360 self-petition which the director denied on September 11, 2009, finding that the evidence in the record showed that the petitioner entered into his prior marriage with D-O- to evade the immigration laws and pursuant to section 204(c) of the Act, he is barred from approval of any immigrant petition. The petitioner filed an appeal with the AAO which we dismissed on June 22, 2010, after making an independent determination that the petitioner entered into his marriage with D-O- solely to obtain immigration benefits and thus, section 204(c) of the Act prohibits the approval of any visa petition filed by or on his behalf.

On October [REDACTED] the petitioner divorced C-D- in Pennsylvania and on October 23, 2013, he filed the instant Form I-360 self-petition. The director subsequently issued a detailed Notice of Intent to Deny (NOID) after determining, based on substantial and probative evidence, that the

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

petitioner is subject to section 204(c) of the Act which bars the approval of an immigrant petition for individuals who have previously sought to be accorded immediate relative or preference status by way of a marriage entered into for the purpose of evading the immigration laws. The petitioner, through counsel, timely responded with evidence that the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-360 petition and counsel timely appealed. On appeal, counsel submits a brief and resubmits affidavits previously submitted in response to the NOID.

The AAO reviews these proceedings *de novo*. 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. Counsel's claims on appeal fail to overcome the director's ground 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 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). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the self-petitioner. *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 shows that director issued a detailed NOID notifying the petitioner that the record indicated he was subject to section 204(c) of the Act and giving him the opportunity to submit evidence of the bonafides of his prior marriage. The record shows that in denying the Form I-360 self-petition, the director reviewed all the submitted and relevant evidence and independently determined that it did not establish the petitioner's eligibility under the applicable standard of proof. We find no error in the director's decision.

The record shows that on February 10, 1994, the petitioner and D-O- did not appear for a scheduled interview with the legacy Immigration and Naturalization Services (INS) related to the Form I-130 petition, but requested to reschedule the interview. An investigation into the bonafides of marriage was subsequently commenced. On November 29, 1994, INS agents conducted surveillance on the claimed marital residence to determine whether D-O- and her two minor children resided there with the petitioner. On November 30, 1994, INS agents interviewed neighboring tenants who did not recognize D-O-, but stated that they recognized the petitioner and that he resided on the second floor with the apartment owner's daughter. The agents went to the address at which D-O- lived before allegedly moving in with the petitioner. There they found D-O- who was residing in the apartment with her two children. During the course of the agents' interview with D-O- on November 30, 1994, she signed a sworn affidavit declaring that she never resided with the petitioner as man and wife and she married him to help him remain in the United States. In addition, D-O- withdrew the Form I-130 petition she had filed on the petitioner's behalf.

Nearly ten years later, on October 9, 2004, D-O- recanted her confession in an affidavit stating that her marriage to the petitioner lasted only a few months, they were separated when she was interviewed by INS agents in November 1994, but she did live with him as man and wife and their marriage was not for immigration purposes. D-O- claimed that when she withdrew the I-130 petition, she was "pressured into signing without having an opportunity to read [her] statement." D-O- did not elaborate on the circumstances under which she was allegedly pressured, and she did not explain why she waited ten years to recant her previous sworn testimony.

The petitioner filed his first Form I-360 petition on December 2, 2008, and on February 23, 2009, the director issued a Request for Evidence (RFE) specifically detailing the evidence indicating that the petitioner was subject to section 204(c) of the Act for having entered into his prior marriage with D-O- to evade the immigration laws, and requesting that he submit evidence demonstrating the bonafides of that marriage. In response, the petitioner submitted a personal affidavit and the affidavits of two of his daughters and seven other individuals. However, neither the petitioner nor the other affiants discussed his relationship with D-O- or his intentions in marrying her. The record also included the petitioner's April 4, 2006 affidavit in which he recalled that he met D-O- at his sister's house and they subsequently married with plans of spending the rest of their lives together. He stated that he and D-O- lived together but she refused to give up her apartment and would take her two children there whenever he and D-O- argued. The petitioner did not describe in probative detail his courtship with D-O-, their wedding, joint residence or any shared experiences.

The record also contains other evidence submitted in support of the petitioner's contention that he entered into his prior marriage with D-O- in good faith. Their marriage certificate showed that the

petitioner married D-O- less than one month after entering the United States as a temporary visitor from the Dominican Republic. A photocopy of a partial residential lease dated July 1, 1993 specifically stated that no more than two people may reside in the apartment on [REDACTED] despite other evidence in the record which showed that D-O-'s two minor children resided with her at the time. A bank book showed that the petitioner and D-O- opened a joint account in June 1994 with a deposit of \$50, made a second \$50 deposit on July 2, 1994 and a third on December 3, 1994, and then closed the account in June 1996, more than a year after they divorced. Photocopies of a March 29, 1994 form receipt and letter from the Social Security Administration addressed to D-O- at the claimed marital address are in the record as well. The bank book showed only minimal deposit activity, no withdrawals during the marriage, and did not demonstrate that the account was utilized by both D-O- and the petitioner as a married couple. The correspondence demonstrated only that D-O- received mail at the claimed marital address on one occasion. The record also contains eleven affidavits, five dated October 7, 2006 and six undated, in which various individuals claimed in identical language to know the petitioner and D-O- who resided together. None of the affidavits provide probative detail of the petitioner's relationship with D-O- or his marital intentions toward her. Neither the evidence already in the record nor that submitted in support of the petitioner's first Form I-360 petition established that the petitioner entered into his marriage with D-O- in good faith and not solely to evade the immigration laws.

On appeal to the AAO, the petitioner submitted a supplemental affidavit in which he briefly stated that his marriage to D-O- was in good faith, they tried to make their marriage work but frequently argued and after their first separation, D-O- moved to Florida. Again, the petitioner failed to describe in probative detail his courtship with D-O-, their wedding, joint residence or any shared experiences. The petitioner also submitted an affidavit by [REDACTED] who briefly stated that the petitioner's marriage to D-O- was in good faith. Ms. [REDACTED] additionally claimed that on an unspecified date, D-O- was drinking at a party, got into an argument, and afterwards went to Ms. [REDACTED] apartment where on the following day Ms. [REDACTED] was pressured by an immigration official to sign a statement she had not read. Ms. [REDACTED] did not explain the nature or context of her interaction with the "immigration official" or the content of the statement she claimed to have signed, and she provided no probative information concerning the petitioner's marital intentions toward D-O-. On June 22, 2010, following our earlier *de novo* review of the entire record, we made an independent determination that the petitioner entered into his marriage with D-O- solely to evade the immigration laws and thus, section 204(c) of the Act prohibited the approval of any visa petition filed by or on the behalf of the petitioner.

When the petitioner filed his second Form I-360 petition on October 23, 2013, the record contained the evidence discussed previously, which we have again reviewed *de novo* and independently determined it insufficient, for the reasons stated above, to establish that the petitioner married D-O- in good faith and not solely to evade the immigration laws. In support of his second Form I-360 petition, the applicant submitted a personal affidavit and other evidence but did not discuss his relationship with D-O- or otherwise demonstrate his marital intentions toward her. The director issued a detailed NOID on January 24, 2014 notifying the petitioner that the record indicated he was subject to section 204(c) of the Act and giving him the opportunity to submit evidence of the bonafides of his prior marriage. In response to the NOID, the petitioner submitted a supplemental

affidavit in which he repeated that his marriage to D-O- was in good faith, they tried to make their marriage work but frequently argued and after their first separation, D-O- moved to Florida. The petitioner added that he met D-O- through his sister, [REDACTED] who introduced them by telephone and he got along well with D-O-'s children. The petitioner did not describe in probative detail his courtship with D-O-, their wedding, joint residence or any shared experiences. His affidavit did not demonstrate that he married D-O- in good faith and not to evade the immigration laws.

The petitioner also submitted a new affidavit by [REDACTED] in which she stated that she has known the petitioner and D-O- since they married, used to spend time with them beginning in 1993, and lived in their residence on Montgomery Street before the petitioner and D-O- moved to another location. Ms. [REDACTED] added that she was "in their house when Immigration came to their house to investigate them" and she is a witness to their happy marriage. Ms. [REDACTED] did not describe any particular occasion spent with the petitioner and D-O- in probative detail, did not describe the claimed period she spent living in their home, did not explain what happened on the day of the immigration investigation, and did not reconcile the account in this affidavit with her earlier statement that D-O- went home to her (Ms. [REDACTED]) apartment where immigration officials found them the next day and pressured her (Ms. [REDACTED]) to sign a statement she did not read.

The petitioner also submitted a sworn statement and a supplemental affidavit by D-O-. In the sworn statement, D-O- stated that she married the petitioner in good faith but their marriage lasted only a few months due to constant arguments and they decided to spend some time apart. D-O-'s statement lacks probative detail about her relationship with the petitioner and does not demonstrate that he married her in good faith. D-O- added that she was feeling very angry at the petitioner on November 30, 1993, so she withdrew the Form I-130 petition she filed on his behalf and was pressured into signing a statement she did not have the opportunity to read. As in her previous statements, D-O- did not describe the circumstances under which she was allegedly "pressured" to sign the statement and did not explain why she waited more than ten years to recant her earlier sworn testimony that she never resided with the petitioner and married him to help him stay in the United States. In the affidavit, D-O- stated that she was introduced to the petitioner by his sister, they spent time together, she enjoyed his company, he got along well with her children, he proposed to her and they married on June [REDACTED]. These statements by D-O- are not probative of the petitioner's marital intentions toward her. D-O- stated that on July 1, 1993, she and the petitioner moved to an apartment on [REDACTED] and she left her previous apartment to [REDACTED]. According to D-O-, after arguing with the petitioner she would sometimes spend the night at Ms. [REDACTED] apartment where immigration agents pressured her to sign a statement saying that her marriage was not in good faith. This statement is inconsistent with Ms. [REDACTED] October 8, 2009 affidavit in which she stated that D-O- was drinking at a party, had an argument, and went afterwards to Ms. [REDACTED]'s apartment where the following day an immigration official pressured her (Ms. [REDACTED]) to sign a statement she never read. D-O- alleged for the first time in the record that immigration agents threatened her with prison and having her children taken away from her if she did not sign a statement saying that her marriage to the petitioner was not in good faith. These alleged statements by INS agents are not supported by the record and D-O- did not explain why she is now making this allegation when her prior affidavits contained no mention of the alleged threats.

The petitioner additionally submitted a residential lease dated July 1, 1993 and purportedly signed by the petitioner, D-O- and the landlord. A photocopy of the same lease was submitted earlier but bore only the landlord's signature. The petitioner did not explain the discrepancy between the leases, which calls into question the authenticity of both documents and the probative value of the petitioner's testimony, and though the newly submitted version contains his and D-O-'s purported signatures, the witness signatures are still missing. The petitioner also submitted affidavits by Mr. [REDACTED]. Mr. [REDACTED] stated that the petitioner used to be his stepfather and he loves him. Mr. [REDACTED] stated that he knew the petitioner and D-O- since they married, they were a happy couple, used to live together, and their favorite activities were movies, grocery shopping, parties and laundry. Neither affiant described any particular occasion spent with the petitioner and D-O- or provided further probative insight into their relationship or the petitioner's marital intent toward her.

On appeal, the petitioner submits no new evidence for the record. Rather, counsel submits a brief in which he asserts that the numerous independent findings of marriage fraud between the petitioner and D-O-, by various USCIS components, the BIA, and the AAO have been a series of misapplications of section 204(c) of the Act and "rubberstamp[ing]." Counsel is mistaken. We have conducted *de novo* review of the entire record, as we did previously in June 2010, and have independently determined, based on substantial and probative evidence, that the petitioner entered into his prior marriage with D-O- for the purpose of evading the immigration laws.

Counsel contends that the director failed to properly apply the "any credible evidence" standard of review; however, this claim conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When determining whether the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1).

Counsel further asserts that the director gave insufficient weight to the petitioner and D-O-'s affidavits and gave too much weight to the lack of documentary evidence. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the affidavits of the petitioner, D-O- and others, which fail to contain probative testimony regarding the

petitioner's marital intentions, do not establish his claim of entering into his marriage in good faith and not to evade the immigration laws when considering the totality of the evidence in the record.

We have conducted an independent *de novo* review of the entire record on appeal and found substantial and probative evidence establishing that the petitioner entered into his prior marriage with D-O- in an attempt to evade the immigration laws. Consequently, he is subject to the bar to approval of his self-petition under section 204(c) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denial. Approval of this self-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. 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.