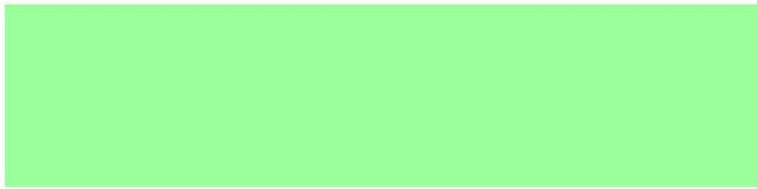




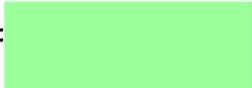
U.S. Citizenship
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Services

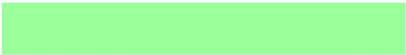
(b)(6)



Date: NOV 10 2014

Office: VERMONT SERVICE CENTER

File: 

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the record will be remanded.

The petitioner seeks immigrant classification under 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 a United States citizen.

The director denied the petition under section 204(c) of the Act, concluding that the petitioner entered his previous marriage for the purpose of evading the immigration laws. On appeal, counsel provides a brief.

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 U.S. 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 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:

(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.

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."

Facts and Procedural History

The petitioner, a citizen of Nigeria, entered the United States on December 14, 2002 as a nonimmigrant visitor. The petitioner married T-W-¹, a U.S. citizen, on May [REDACTED] T-W- subsequently filed a Form I-130, Petition for Alien Relative on behalf of the petitioner. After an immigration interview with T-W- and the petitioner, the Houston, Texas District Director (district director) issued a Notice of Intent to Deny (NOID) the Form I-130 petition. T-W- timely responded to the NOID; however, the district director found the response insufficient to establish eligibility and denied the petition on October 22, 2004. T-W- timely appealed the director's denial. On July [REDACTED] T-W- and the petitioner divorced, and the appeal was dismissed as moot.

The petitioner married K-P-, a U.S. citizen, on January [REDACTED] K-P- filed a Form I-130 petition on behalf of the petitioner, which was denied as abandoned on August 14, 2006. The petitioner and K-P- divorced on September [REDACTED]. On October 10, 2006, the petitioner filed his first Form I-360 self-petition based on his marriage to K-P-. The director issued a NOID advising the petitioner that approval of his petition was barred by section 204(c) of the Act based on his marriage to T-W-, among other issues. The petitioner timely responded to the NOID with additional evidence; however, the director found the evidence insufficient and denied the petition on August 15, 2007, finding among other deficiencies that approval of his self-petition was further barred by section 204(c) of the Act.

On February 8, 2008, the petitioner filed the instant Form I-360 petition based on his marriage to K-P-. On June 19, 2013, the director issued a Request for Evidence (RFE) of the petitioner's good moral character and eligibility for immigrant classification with respect to section 204(c) of the Act. The petitioner timely responded with additional evidence. The director denied the petition on December 9, 2013, finding that the petitioner established eligibility for all of the criteria except for his eligibility for immigrant classification under section 204(c) of the Act. The petitioner, through counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the petitioner's administrative record does not establish that the director's finding was based on substantial, probative evidence that the petitioner entered into marriage with T-W- to evade the immigration laws. We therefore withdraw this ground of denial. However, the petition cannot be approved as *de novo* review of the relevant evidence reveals that the petitioner has not established that he married K-P- in good faith. Consequently, the matter will be remanded to the director for further action.

Section 204(c) of the Act

The director denied the instant self-petition pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), which states, in pertinent part:

[N]o petition shall be approved if –

¹ Name withheld to protect the individual's identity.

- (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). United States 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).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together. *Id.* at 387.

The doubt cast on the validity of the petitioner's marriage to T-W- is mainly based on discrepancies between the petitioner's and T-W-'s statements at their immigration interview and a site check telephone call by a USCIS agent to T-W-'s grandmother's home. The discrepancies in the petitioner's immigration interview were detailed in the district director's I-130 NOID dated August 3, 2004 and were referred to in the denial of the petitioner's first I-360, which were incorporated by reference in the director's denial of the instant petition. The discrepancies involved the petitioner's and T-W-'s responses to questions regarding which of the petitioner's friends drove the couple to the immigration interview and whether or not the couple had "prepared" for the immigration interview. In an affidavit dated August 6, 2004, submitted in response to the I-130 NOID, T-W- explained that she and the petitioner interpreted the questions differently. She stated that she thought the

interviewer was asking if the same friend who drove the petitioner to work drove them to the interview, and she replied "no." She stated that the petitioner thought that he was asked simply if a friend drove them to the interview, and he said "yes." She also stated that they had different interpretations of what the interviewer meant by "prepared," and therefore replied differently when asked whether they had prepared for the interview. In an affidavit dated February 1, 2008, submitted with the instant Form I-360 petition, the petitioner provided the same credible explanation for the discrepancies in the answers to these questions. The director did not address either of these affidavits in the denial of the instant petition.

The petitioner's administrative record reflects that in February 2005, when T-W-'s appeal of her Form I-130 was still pending, a USCIS officer determined that public records indicated that T-W- resided at an address on [REDACTED] in Houston, Texas. The officer noted that a call was placed to the phone number of that address and that the person who answered the phone identified herself as T-W-'s grandmother and stated that T-W-'s whereabouts were unknown to her and she was not aware that T-W- was married. These findings appear to be a synopsis of an investigation initiated by the USCIS officer but do not indicate the date the call was placed, identify the individual officer that placed the call, or provide any other specific, contemporaneous notes regarding the telephone conversation. The director relayed this information to the petitioner in the RFE for the instant petition. In response to the RFE, the petitioner submitted an affidavit from T-W-'s grandmother, dated July 22, 2013, stating that she resides on [REDACTED]. She further asserted that she has no memory of receiving a call from the government regarding T-W-'s marriage, and that she was aware of T-W-'s marriage to the petitioner. The petitioner provided a map showing that [REDACTED] are within a few blocks of each other in Houston, Texas. The petitioner's administrative record reflects that with the appeal of the Form I-130, T-W- submitted a notarized affidavit from her grandmother, dated November 10, 2004, stating her personal knowledge of T-W-'s marriage to the petitioner.

The record contains additional documents that support the bona fides of the petitioner's marriage to T-W-. In an affidavit November 14, 2007, T-W- described her first meeting with the petitioner, the various residences that they shared, and activities they did together during their marriage. In an affidavit dated June 15, 2007, the petitioner's friend [REDACTED] stated that T-W- and the petitioner did their grocery shopping at his store, and that he shared social outings with the couple. In an affidavit dated June 13, 2007, the wife of T-W-'s cousin recounted that the petitioner and T-W- spent Thanksgiving at T-W-'s grandmother's house in 2003, and described the visits that he and his wife shared at the petitioner and T-W-'s home. He also described an incident when the petitioner contacted him to help him pick up T-W- from the doctor's office when the petitioner's car was in the shop because the petitioner did not want T-W- to take the bus home. The petitioner also provided a lease for an apartment on [REDACTED] listing both the petitioner and T-W- as occupants, and his and T-W-'s 2003 tax return, indicating their status as "Married filing jointly."

De novo review of the petitioner's administrative record does not demonstrate that the director's decision was based upon substantial and probative evidence that the petitioner married T-W- to evade the immigration laws. The record contains evidence of minor discrepancies at the petitioner's and T-W-'s immigration interview, and brief information regarding a telephone investigation. Both of these issues have been credibly addressed by the petitioner, and other relevant evidence, including T-W-'s appeal of the Form I-130 denial and related documents. In addition, the record also contains

further evidence of the bona fides of the petitioner's marriage to T-W-, described above. Accordingly, the director's finding on this issue will be withdrawn.²

Good Faith Entry into Marriage with the Petitioner's Abusive Spouse

Although the petitioner has overcome the basis for the director's denial, the appeal cannot be sustained as the petitioner has not established that he married K-P- in good faith. The petitioner submitted numerous personal affidavits in support of his Form I-360 self-petition; however, none contain probative information regarding his and K-P-'s courtship, wedding ceremony, or shared experiences beyond the details of the abuse. In an affidavit dated November 16, 2006, the petitioner briefly asserted that he married K-P- to establish a family. In another affidavit dated February 1, 2008, the petitioner stated that he met K-P- in September 2005, while K-P- was on a trip to Houston from her home in Arkansas. The petitioner indicated that K-P- moved to Houston on December 20, 2005 and the couple married on January 10, 2006 and then began living together. He did not provide further details regarding the couple's courtship and wedding. In an affidavit dated May 30, 2007, the petitioner's friend [REDACTED] asserted that he celebrated the couple's marriage with them in January 2006, but did not provide a description of the event. In affidavits dated June 1, 2007, June 14, 2007, February 1, 2008, the petitioner represented that K-P- moved into his existing apartment, and he added her to his existing accounts. The petitioner further represented that he was the only one paying the bills in the house, and that the joint bank account that he opened with K-P- did not have more than the \$40.00 initial balance. The petitioner stated that due to his limited income, he was not able to put more money in the joint account. The petitioner's sole evidence of a shared life with K-P-, beyond the brief statements in the affidavits and his explanations as to why no evidence is available, is a joint health insurance policy that the petitioner purchased in May 2006, after the relationship had begun to deteriorate, and unlabeled photographs of what appear to be the petitioner's civil wedding ceremony. Without further evidence of the petitioner's courtship, wedding ceremony, shared residence and experiences with K-P-, the insurance policy and the photographs alone are not sufficient to establish the petitioner's intent in marriage.

Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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). However, the petitioner must still prove by a preponderance of the evidence that he married K-P- in good faith. In lieu of traditional evidence, 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." 8 C.F.R. § 204.2(c)(2)(vii). The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act. Here, neither the petitioner's affidavits nor those of his friends provide probative information regarding the petitioner's and K-P-'s courtship, wedding ceremony, shared residence and experiences, beyond the details of the abuse. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with K-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

² Our withdrawal of the director's finding on appeal does not preclude a subsequent determination by the director on this issue if made based upon substantial and probative evidence.

Conclusion

On appeal, the petitioner has overcome the director's only stated ground for denial. However, the petition must be remanded to the director because the petitioner has not established that he married K-P- in good faith.

ORDER: The December 9, 2013 decision of the Vermont Service Center is withdrawn. The petition is remanded to the Vermont Service Center for further action and issuance of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.