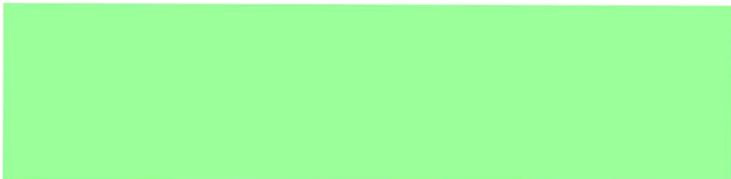


(b)(6)

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

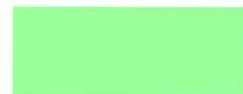


U.S. Citizenship
and Immigration
Services

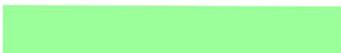


Date: NOV 14 2014

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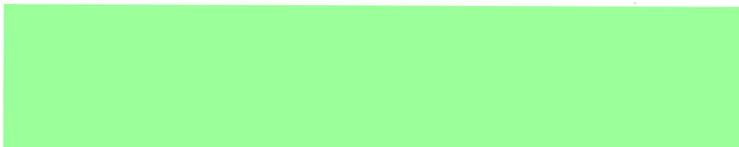


IN RE: Self-Petitioner:



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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (“director”) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director’s decision and the matter will be remanded for further action and consideration.

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 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 his petition because he entered into a prior marriage for the purpose of evading the immigration laws.

On appeal, the petitioner, through counsel, submits a brief and an affidavit.

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.

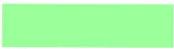
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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 Benin who was admitted to the United States on August 17, 2001 as a nonimmigrant student. The petitioner subsequently married his first wife, R-M-, and their marriage



terminated in a divorce on February [REDACTED] in Georgia.¹ He married his second wife, M-S-, on February [REDACTED] in Georgia and their marriage terminated in a divorce on October [REDACTED] in Georgia. The petitioner married his third and current spouse, G-K-, a U.S. citizen, on February 3, 2011 in Georgia. He was placed in removal proceedings on August 18, 2011 and currently remains in proceedings.²

The petitioner filed the instant Form I-360 on June 29, 2012 based on his marriage to G-K-. The director subsequently issued a Notice of Intent to Deny (NOID) based 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 immediate relative status by way of a marriage entered into for the purpose of evading the immigration laws; and the petitioner's failure to establish his good-faith entry into his current marriage to G-K-. The petitioner, through counsel, 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, through counsel, filed a timely appeal.

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.

The record reflects that the petitioner's second wife, M-S-, filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 24, 2004. On October 6, 2005, the petitioner and M-S-

¹ Names withheld to protect the individual's identities.

² The petitioner's next hearing date is on August 25, 2016 before the Atlanta Immigration Court.

appeared at the U.S. Citizenship and Immigration Services (USCIS) Atlanta District Office for an interview in connection with the Form I-130 petition and the petitioner's concurrently filed Form I-485, Application to Adjust Status. During the interview, M-S- withdrew the Form I-130 petition she filed on behalf of the petitioner and the petition's Form I-485 application was denied accordingly.

In the NOID for the instant petition the director referred to a January 31, 2006 investigation undertaken by USCIS Fraud Detection and National Security (FDNS) officers, which resulted in a Fraud Verification Memorandum, dated March 10, 2006, "confirming that [the petitioner] entered into marriage with [M-S-] for the purpose of circumventing immigration law. In response to the NOID, the petitioner attested to entering into the marriage with M-S- in good-faith and described their marriage. He also submitted evidence that he and M-S- had joint automobile insurance and a joint bank account and supporting statements from his sister and two of his friends. The petitioner had also initially submitted with the Form I-360 a letter from M-S- stating that her marriage to the petitioner was "based on true love."

The director reviewed the petitioner's evidence and determined that it was insufficient to overcome the finding that he married M-S- for the purpose of circumventing immigration laws. On appeal, the petitioner, through counsel, asserts that he was not provided the opportunity to review the derogatory information in the record, as required by 8 C.F.R. § 103.2(b)(16)(i),(ii). The petitioner contends that since he has not been made aware of the reason his marriage was deemed fraudulent, he has been unable to provide specific evidence to overcome the finding of marriage fraud. The petitioner submits an affidavit in which he discusses the breakdown of his marriage to M-S- and their divorce.

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 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).

In the NOID and denial, the director referred to a FDNS investigation and a Fraud Verification Memorandum, which the director asserted revealed that the petitioner entered into marriage with M-S- for the purpose of circumventing immigration law. However, the Fraud Verification Memorandum, dated March 10, 2006, fails to cite to any investigative reports conducted by FDNS and only states that "[t]he fraud has been documented." Moreover, the record is devoid of any investigative reports conducted by FDNS regarding the petitioner's marriage to M-S-. For instance, there is no admission that the parties colluded to evade the immigration laws or that the petitioner was paid to marry the beneficiary. *See Ghaly v. INS*, 48 F.3d 1426 (7th Cir. 1995); *Salas-Velazquez v. INS*, 34 F.3d 705 (8th Cir. 1994). Nor is there an admission that the marriage was never consummated, that the spouses never cohabited, or that the spouses never held themselves out to family and friends as husband and wife. *See Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). Our independent and de novo review of the relevant evidence fails to establish that the director's findings were based upon substantial and probative evidence that the petitioner entered into a

marriage with M-S- for the purpose of evading the immigration laws; the director's determination on this issue must be withdrawn.³

Conclusion

We have withdrawn the director's sole ground for denial. However, since the director did not make a specific finding on any of the remaining statutory requirements, the petition will be remanded for a determination of the petitioner's eligibility under the requirements of section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

ORDER: The August 2, 2013 decision of the service center director is withdrawn. The petition is remanded to the director for further action and issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

³ 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.