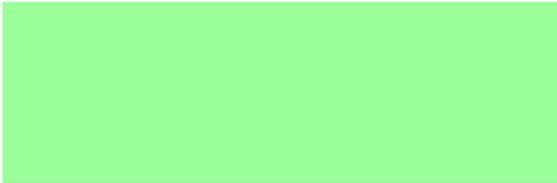


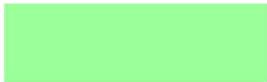


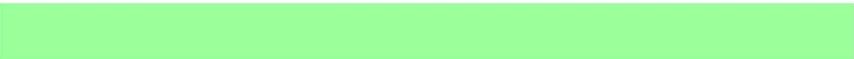
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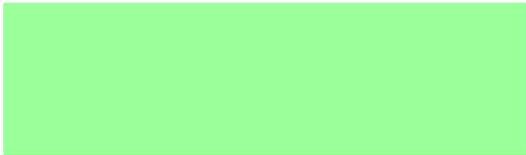
Date: **SEP 30 2014**

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:

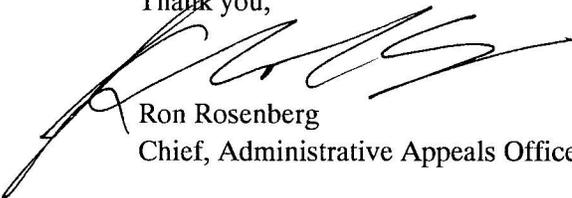


INSTRUCTIONS:

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. 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 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 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 her former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s previous marriage was not entered into for the purpose of circumventing immigration laws, and that she entered the marriage underlying this petition in good faith. On appeal, counsel submits 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 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 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation, which requires the self-petitioner to demonstrate eligibility for immediate relative classification based on the spousal relationship to the U.S. citizen and to comply with section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(i), (iv). The regulation at 8 C.F.R. § 204.2(c)(1)(ix), further states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the

immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other'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. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

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 [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary of Homeland Security] 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)(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States in 1983 as a nonimmigrant student. On March 2, 2009, the petitioner married R-C¹, a U.S. citizen and her fourth husband, in Los Angeles, California. The marriage ended after the Superior Court of California, County of Los Angeles, granted the petitioner's request for nullity of marriage on October 24, 2011. The petitioner filed the instant Form I-360 self-petition on July 23, 2012. The director subsequently issued a Notice of Intent to Deny (NOID) based on her prior marriage to W-O² and 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 prior marriage entered into for the purpose of evading the immigration laws. The director also requested additional evidence of, among other things, the petitioner's good-faith entry into her marriage to R-C-. The petitioner, through counsel, 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 and the petitioner's failure to establish her good-faith entry into marriage with R-C-. Counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Section 204(c) of the Act

The record shows that the petitioner has been married four times. On February 7, 2001, she married W-O- in Baltimore, Maryland. On September 26, 2003, W-O- filed the first of three Form I-130 alien relative immigrant visa petitions on the petitioner's behalf. On December 17, 2004, USCIS issued a NOID, stating that the documents submitted in support of the relative petition were dated in 2004, and, therefore, failed to demonstrate a bona fide marriage since the inception of the couple's

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

marriage in 2001. In addition, the NOID specified that the petitioner and W-O- had filed income tax returns indicating their marital status as "single," and that the address W-O- listed on his income tax returns was inconsistent with his Form G-325A Biographic Information form. The NOID further stated that according to an investigation by [REDACTED] the petitioner and W-O- were not living together.

The petitioner's former counsel responded to the NOID claiming, among other things, that the petitioner had brain surgery six days after her marriage to W-O-, owned her home on [REDACTED] since 1994, and that witnesses were ready to testify regarding their bona fide marriage at the adjustment interview, but the officer declined to meet with them. Counsel submitted additional evidence, including amended income tax returns reflecting their marital status as married filing jointly and copies of medical records confirming the petitioner underwent brain surgery on February 13, 2001. The petitioner submitted an affidavit describing how she was diagnosed with a brain tumor and underwent surgery several days after she married W-O-. She described how W-O- helped her during her lengthy recovery. An affidavit from W-O- stated that he married the petitioner knowing that she had a brain tumor. He described the petitioner's brain surgery and how he helped in her recovery. He explained that he used his mother's address as he tried to start a small business while awaiting a decision on his claim for disability benefits. Counsel subsequently submitted a supplemental response along with three articles asserting that USCIS should not have relied on [REDACTED] investigation as the company was being investigated for negligence.

The Form I-130 relative petition was denied on September 16, 2005. The USCIS Baltimore, Maryland Field Office Director found that although the petitioner established she owns the house located on Bohn Court and underwent surgery after her marriage, the evidence did not show she resided with W-O- in a bona fide marriage. Counsel subsequently filed a timely appeal to the Board of Immigration Appeals which affirmed, without opinion, USCIS's decision on October 23, 2005.

On November 18, 2005, W-O- filed a second Form I-130 relative petition. The petitioner and W-O- appeared for interviews on that petition on March 30, 2006, and on August 10, 2006. On August 21, 2006, the Baltimore Field Office Director issued a NOID, specifying numerous inconsistencies from the marriage interviews including, but not limited to: W-O- did not know the petitioner's birthday, that she has a middle name, or that she has a tattoo on her arm; and discrepancies between the petitioner's and W-O-'s testimony regarding their house, such as whether bedrooms had furniture and where windows were located. On September 29, 2006, the Form I-130 relative petition was denied when W-O- did not respond to the NOID. After counsel filed a motion to reopen, on December 19, 2006, the Baltimore Field Office affirmed the decision denying the relative petition. On April 10, 2007, W-O- filed a third Form I-130 relative petition which was denied as abandoned on December 3, 2007, for failing to appear before an interviewing officer as requested. The petitioner's marriage to W-O- ended in divorce on December 18, 2008.

On March 2, 2009, the petitioner married R-C- and she subsequently filed the instant Form I-360 self-petition which was denied pursuant to section 204(c) of the Act. Counsel contends, among other things, that USCIS erred in concluding that the petitioner's prior marriage to W-O- was a sham marriage and failed to consider the report by Dr. [REDACTED] which included

numerous details regarding the petitioner's marriage. Counsel contends the petitioner was not the subject of removal or deportation proceedings when she married W-O-, and therefore, had no need to circumvent immigration laws. Counsel requests in the alternative that even if there is insufficient evidence to show a bona fide marriage between the petitioner and W-O-, that the finding be changed from fraudulent to inconclusive because, according to counsel, there is no evidence the petitioner entered into the marriage to circumvent immigration laws.

The preponderance of the relevant evidence does not establish that the petitioner married W-O- in good faith and not for the purpose of circumventing immigration laws. The Vermont Service Center Director issued a NOID for the instant self-petition, specifically requesting evidence addressing whether or not the petitioner's prior marriage to W-O- was entered into for the purpose of circumventing immigration laws. Despite this specific request, the petitioner's affidavit did not address her marriage to W-O- and she has not submitted any statement on appeal. Affidavits from [REDACTED] described that the petitioner and W-O- were in love when they got married and were a happy couple, but did not provide substantive information regarding the couple's relationship or the petitioner's marital intentions. They did not describe in detail, for example, any specific contact with the petitioner and W-O-, any particular visit or social occasion with the couple, or any other interactions with the couple that would establish their personal knowledge of the relationship.

Dr. [REDACTED] evaluation assessed the petitioner's mental health and focused on the abuse in her fourth marriage. Dr. [REDACTED] conveyed no personal knowledge of the petitioner's marriage to W-O-. The evaluation merely recounted what the petitioner described to the psychologist on June 25, 2013, more than twelve years after the petitioner married W-O-. Dr. [REDACTED] briefly stated that the petitioner met W-O- through her brother and that the couple "became closer and enjoyed each other's company." She described how W-O- was supportive of the petitioner after her surgery and that they lived happily for a few years before they divorced. Dr. [REDACTED] evaluation did not provide probative details of the couple's courtship, wedding ceremony, shared residence, or experiences.

Although the record includes copies of amended joint income tax returns and joint bank account statements, as well as indications in the medical records that the petitioner lived with W-O- during her treatment, without a statement from the petitioner describing her relationship with W-O- and her marital intentions in probative detail, the preponderance of the evidence does not rebut USCIS's section 204(c) finding.

To the extent counsel contends there is no evidence to show the petitioner entered into the marriage to circumvent immigration laws, as stated above, USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). *De novo* and independent review of the petitioner's administrative file reveals substantial and probative evidence that the petitioner married W-O- to evade the immigration laws. The Record of Sworn Testimony from the petitioner's and W-O-'s interviews at the Baltimore Field Office on August 10, 2006, gives reason to doubt the validity of the marital relationship. For example, W-O- incorrectly testified that the petitioner has no middle name, gave an incorrect date of birth for the petitioner, and stated she had no body markings or body art whereas the petitioner

testified she had a sizeable tattoo on her right arm. In addition, the petitioner and W-O- gave significantly discrepant descriptions of the bedrooms in their claimed marital residence.

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). In this case, the petitioner has not addressed major inconsistencies from her interviews at the Baltimore Field Office in 2006. She also has not provided evidence regarding her courtship, wedding ceremony, shared residence and experiences with W-O- either through her own probative, detailed statement or from other individuals who have personal knowledge of the relationship. The preponderance of the relevant evidence does not show that the petitioner entered into marriage with W-O- in good faith and not for the purpose of circumventing immigration laws. Section 204(c) of the Act consequently bars approval of the instant self-petition.

Entry into the Marriage in Good Faith

We now turn to whether the petitioner established she married R-C-, her fourth husband, in good faith. The petitioner stated she met R-C- while visiting a friend in California. She briefly recounted that they fell in love, got married, and had a happy marriage at first. The petitioner's affidavit failed to provide specific information regarding her relationship with R-C- and her intentions for marrying him. Apart from the abuse, her affidavit did not substantively discuss the couple's courtship, wedding ceremony, or shared residence and experiences.

Statements from the petitioner's brother and sister briefly described how the petitioner seemed happy when she met R-C-, but provided no probative details regarding the couple's relationship or their sister's marital intentions. They did not describe, for example, whether they have ever met R-C- or whether they attended their sister's wedding. The remaining documents show that the petitioner resided with R-C-, opened a bank account in both of their names, and was photographed with him, but do not show she married him in good faith. To the extent counsel contends that Dr. [REDACTED] report establishes the petitioner's good-faith entry into marriage, Dr. [REDACTED] only addressed the petitioner's marriage to R-C- as it was reported to her by the petitioner in June 2013, more than four years after the marriage. The evaluation primarily discussed the abuse and indicated that Dr. [REDACTED] has no personal knowledge of the relationship. The petitioner submitted no additional affidavit or other relevant evidence on appeal. The preponderance of the relevant evidence does not show the petitioner entered the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Beyond the decision of the director, the record reflects that section 204(g) of the Act also bars approval of the petition. The record shows that on February 4, 2008, the petitioner was served with a Notice to Appear for removal proceedings at the Baltimore, Maryland Immigration Court on June 26, 2008. The petitioner married R-C- on March 2, 2009, and remains in removal proceedings as of the date of this decision. Therefore, the record in this case indicates that the petitioner was in removal proceedings at the time of her marriage to R-C-. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien’s right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added).

Because the petitioner married R-C- while she was in removal proceedings and she did not remain outside of the United States for two years after their marriage, her self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar

evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting” standard). To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this self-petition.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner is also not eligible for immediate relative classification based on her marriage to R-C-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because she has not complied with, nor is she exempt from, sections 204(c) and 204(g) of the Act.

Conclusion

Approval of the instant petition is barred pursuant to section 204(c) of the Act, and the petitioner has failed to rebut the section 204(c) finding and establish that she entered into her previous marriage with W-O- in good faith. The petitioner also failed to establish that she married R-C- in good faith, is exempt from the bar to approval of her petition under section 204(g) of the Act, or is eligible for immediate relative classification based on her previous marriage to R-C-. She is consequently ineligible for immigrant classification under 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). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.