



U.S. Citizenship  
and Immigration  
Services

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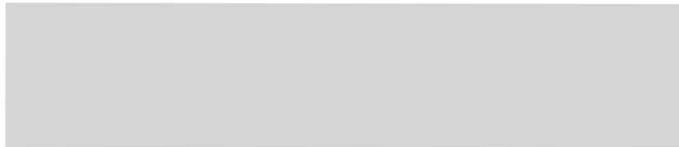
DATE: **AUG 10 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the petition. 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 a United States citizen spouse.

The director determined that the petitioner is subject to the bar to approval of her self-petition at section 204(c) of the Act, 8 U.S.C. § 1154(c), because she entered into a prior marriage for the purpose of evading the immigration laws. On appeal, the petitioner 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).

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 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."

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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Nigeria, entered the United States as a fiancée of N-U-<sup>1</sup>, a U.S. citizen, on November 26, 1996. She married N-U- on [REDACTED] 1996. The petitioner subsequently filed an application to adjust status (Form I-485) based upon her marriage to N-U-, and the couple was interviewed by an officer of the legacy Immigration and Naturalization Service (INS) regarding the bona fides of their marriage. The petitioner and N-U- divorced on [REDACTED] 1998.

On [REDACTED] 1999, the petitioner married P-M-<sup>2</sup>, a U.S. citizen. P-M- filed an immediate relative petition (Form I-130) on the petitioner's behalf, which was initially approved but subsequently revoked after a determination that section 204(c) barred the approval of the petition because the petitioner had entered into a sham marriage with N-U-. In January 2004, the Board of Immigration Appeals (the Board) affirmed the decision revoking approval of the Form I-130.

On November 5, 2013, the petitioner filed the instant Form I-360 self-petition based upon her marriage to P-M-. The director subsequently issued a Notice of Intent to Deny (NOID) the petition because of section 204(c) of the Act, which bars the approval of a subsequent petition for individuals

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

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

who have previously sought to be accorded an immediate relative status by way of a marriage entered into for the purpose of evading the immigration laws. The director requested evidence that the petitioner's prior marriage to N-U- was bona fide and not entered into for purposes of evading immigration laws. The petitioner timely responded with additional evidence which the director found insufficient and the director denied the petition. The petitioner filed a timely appeal.

The AAO conducts appellate review on a *de novo* basis. Upon an independent review of the record, the petitioner has not overcome the director's ground for denial.

### *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 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. *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). The evidence of the attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws must be contained in the alien's file. See 8 C.F.R. § 204.2(a)(1)(ii).

### *Evidence of Marriage Fraud*

#### A. The Petitioner and N-U-'s Engagement

In her initial declaration, dated October 25, 2013, the petitioner stated that in December 1994, she met N-U- at an "afterparty" in Nigeria, as she had been in the play *Beauty and the Beast*. She recounted that N-U- told her that he resided in the United States and that he was visiting his family in Nigeria. The petitioner claimed that they exchanged phone numbers and "started communicating frequently until [N-U-] proposed to [her] in 1996." She further stated that she was [redacted] years old when she became engaged to N-U-.

The director subsequently issued a NOID, requesting evidence that the petitioner's prior marriage to N-U- was bona fide and not entered into for purposes of evading immigration laws. In response, the petitioner provided a second declaration dated, October 27, 2014. In this October 2014 declaration, the petitioner also stated that she met N-U- at an afterparty; however, her description of the couple's engagement varied significantly from her October 2013 declaration in the following ways.

In this second declaration, the petitioner claimed that she gave N-U- her address at the afterparty and that same night went home and told both of her parents about the couple's meeting because she was very attracted to N-U-. The petitioner then went on to state that a few days later, N-U- surprised her by visiting her home and introducing himself to her parents. According to the petitioner, N-U- met with her parents in private for over an hour before she was "called into their meeting" and told that N-U- asked the petitioner's parents for the petitioner's hand in marriage. She further claimed that after asking

her opinion, her parents accepted N-U-'s marriage proposal, they had their pictures taken, and she was introduced to N-U-'s mother. Contrary to her initial declaration in which she stated that she was 19 years old when she became engaged after an extended period of correspondence, the petitioner claimed in this second declaration that the events of meeting N-U- and N-U-'s mother and becoming engaged to him occurred shortly after meeting him when she was █ years old.

Regarding her engagement to N-U-, the petitioner provided an affidavit from her mother, █ and a letter from N-U-. In her affidavit, Ms. █ asserted that the petitioner met N-U- at a party in December 1994 and three days later the petitioner introduced N-U- to the petitioner's parents. Ms. █ further asserted that N-U- "later came back and proposed marriage which we granted same," they had photographs taken "to confirm [their] approval," and then "went to visit [the mother of N-U-] and thereby took a photograph together with her." Ms. █ recollection of the engagement is inconsistent with the petitioner's recollection in that the petitioner asserted in her October 2014 declaration that her and N-U-'s engagement was discussed and favorably decided upon the first time that her parents and N-U- met.

Further adding inconsistencies into the record is a March 19, 1995 letter from N-U-, written from the United States, and addressed to the petitioner's parents. In this letter, N-U- introduces himself to the petitioner's mother and father ("My name is [N-U-], who is currently residing her in the United States of America"), stating that the letter will "really take [the petitioner's parents] by surprise." In this letter, N-U- recounts to the petitioner's parents how he met the petitioner. N-U- also notifies the petitioner's parents that he and the petitioner are engaged and asks the petitioner's parents for their permission to be married. However, if the petitioner and N-U- had met in 1994 as the petitioner initially claimed, at which time N-U- had asked for the petitioner's hand in marriage, he would not have needed to write a letter from the United States in March 1995 to introduce himself, explain to the petitioner's parents how the couple had met, and ask for the parents' permission for him to marry their daughter.

On appeal, the petitioner asserts that N-U-'s March 1995 letter is not inconsistent with her declarations or her mother's affidavit, which appear "to contemplate an engagement beginning in December 1994." The petitioner states further that the start of the couple's engagement is not contemporaneous with the date of the March 19, 1995 letter, and that she could have been N-U-'s fiancée for some time prior to the date of the letter. The petitioner further argues that after her mother and father met N-U- they accepted his marriage proposal but that Nigerian courtship and engagement practices require that N-U-'s family accept the marriage proposal for the engagement to occur.

The petitioner has provided no evidence on appeal regarding the Nigerian courtship and engagement practices to which she refers that would explain the inconsistencies discussed herein. In her second declaration submitted in response to the NOID, the petitioner stated that she met N-U- as a result of her participation in a play and that same night, he told her that he lived in █ and asked for her address. The petitioner has not explained why she stated in her initial declaration that she did not become engaged until she was █ years old, but in her second declaration claim that she became engaged at the age of █ very soon after meeting N-U-. N-U-'s March 1995 letter contradicts both of the petitioner's declarations and the affidavit of her mother. Although the

petitioner has provided an internally consistent account of how she met N-U- (at an afterparty), none of the remaining information regarding the petitioner's engagement and courtship has been consistently or credibly provided such that we can conclude that she entered into her marriage with N-U- to establish a life together with him.

B. The Petitioner and N-U-'s Residence in the United States

The petitioner claimed that during their courtship N-U- told her that he had one child, but after she arrived in the United States, N-U- admitted that he really had three children with whom he lived, and that although she was upset about his lack of candor, the petitioner decided to marry him because she could not return to school in Nigeria, and her community members told her to get married.

The petitioner claimed that she initially took care of the children with whom she and N-U- lived, but she eventually attended a nursing program in the evenings while N-U- watched the children. She indicated that they had problems in their marriage when N-U- told her that he did not want to have more children. The petitioner stated that they separated on January 20, 1998, and then divorced on [REDACTED] 1998.

The petitioner's recollection of her life with N-U- in the United States as presented in her Form I-360 self-petition is inconsistent with information that she and N-U- provided to a legacy INS officer during the couple's interviews regarding the petitioner's adjustment of status application. The petitioner testified that only she and N-U- lived at their apartment in [REDACTED] and never mentioned N-U-'s three children. N-U-'s testimony was that four people - himself, the petitioner, [REDACTED] and sometimes [REDACTED] (not his children) lived at their marital home.

The petitioner also submitted into the Form I-360 self-petition record a sworn affidavit, dated April 12, 2004, from N-U- in which he claimed that his marriage to the petitioner "was genuine and based on love and good faith." He stated that the "discrepancies of the said Immigration and Naturalization [sic] Services questions during the interview . . . was for the fact that [the petitioner] did not know much about [him] in that short time of her visit to [the] US. . . ." However, at the time of the adjustment of status interviews, the petitioner and N-U- had been married for almost a year, and the adjustment of status interview notes show that they gave inconsistent testimony on basic information such as who lived in their marital home, where they worked and attended school, and how many children they each had. The petitioner's responses to the questions of the INS officer are not consistent with her account of her residence with N-U- as she provided in her Form I-360 self-petition such that we can conclude that her marriage was entered into to establish a life with N-U- and not to evade the immigration laws.

C. Other Evidence To Establish the Bona Fides of her Marriage

The petitioner also submitted photographs of the petitioner and her daughter, her mother and father, and N-U- that she claims were taken in December 1994; and a clinical assessment from [REDACTED], a licensed clinical social worker. According to Ms. [REDACTED] the petitioner indicated that she decided to marry N-U- because "it would be nice," "all of [the petitioner's] friends were getting married," the petitioner wanted children, and N-U- "carried himself well," and "said sweet things." Ms.

generally concluded that the petitioner “likely married her first husband out of a desire to have a family.” However, Ms. conclusion is based on a few general statements from the petitioner and not on a detailed, probative account of the petitioner’s courtship, feelings for N-U-, and decision to marry. Ms. conclusion is insufficient to overcome the inconsistencies we have previously discussed within the petitioner’s declarations, the affidavit of the petitioner’s mother and in the letter from N-U-.

*Analysis*

The petitioner argues that the director has not provided a detailed, independent determination that she entered into her marriage to N-U- for the purpose of evading immigration laws. She further argues that the director “overstepped” the director’s authority “in the factual findings” because the director was “highly selective” in the interpretation of the statements of the petitioner, her mother, and N-U- regarding the petitioner’s engagement. The director’s finding that the petitioner is subject to the section 204(c) of the Act bar to the approval of her petition is based on not only the numerous discrepancies regarding the petitioner’s claimed engagement to N-U- as provided in her declarations, but also on the evidence contained in the petitioner’s file.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. *See* Section 204(a)(1)(J) of the Act; 8 C.F.R. 204.2(c)(2)(i). All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). When viewed as a whole, the record contains substantial and probative evidence that the petitioner entered into her marriage to her first husband for the purpose of evading immigration laws, and section 204(c) of the Act bars approval of this petition. The petitioner has not provided a detailed, probative and credible account of her and N-U-’s courtship, her decision to marry, the couple’s marriage ceremony, joint residence, or any of her shared experiences with N-U-. Our independent review per *Tawfik* demonstrates that the evidence is substantial and probative of the petitioner’s attempt to evade the immigration laws by entering into a fraudulent marriage with N-U-. Consequently, section 204(c) of the Act bars the approval of the instant self-petition and she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

*Conclusion*

The petitioner bears the burden of proving her eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.