

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JAN 29 2015**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

SELF-REPRESENTED

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting 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 acting director denied the petition for failure to establish that the petitioner entered into a good-faith marriage and was subjected to battery or extreme cruelty by his wife during their marriage. In addition, the acting director denied the petition under section 204(c) of the Act finding that the petitioner attempted to enter 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)(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).

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 at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

- (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act [and] section 204(g) of the Act. . . .

* * *

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

* * *

(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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Tanzania who last entered the United States on January 22, 2000, as an F-1 nonimmigrant student. On December [REDACTED] the petitioner married his first wife, A-G-¹, a U.S. citizen, in [REDACTED] Texas. Their marriage was declared void by the District Court, 310 Judicial District, in [REDACTED] County, Texas, on January [REDACTED]. The petitioner married R-D-², a U.S. citizen, on March [REDACTED] County, Texas. The two were separated in June of 2008 and the petitioner returned to Tanzania in April of 2010 where he currently resides. The petitioner filed the instant Form I-360 self-petition on August 8, 2011, based on battery or extreme cruelty by R-D-³. On December 5, 2012, the director issued a Notice of Intent to Deny (NOID) based on section 204(c) of the Act, the petitioner's failure to establish battery or extreme cruelty by R-D- during their marriage, the petitioner's good moral character, and the petitioner's good-faith entry into marriage with R-D-. The petitioner submitted a letter, dated February 19, 2013, indicating he never received the NOID. On January 8, 2014, the director denied the self-petition for failure to establish that the petitioner resided with R-D- during their marriage and the petitioner's good moral character. The petitioner's subsequent motion to reconsider was granted on March 26, 2014 and on March 28, 2014, the director issued another NOID providing the petitioner the opportunity to submit additional evidence to establish that his self-petition is not barred by section 204(c) of the Act, that he was subjected battery or extreme cruelty by R-D- during their marriage, and that he married R-D- in good faith. The petitioner responded by letter dated April 7, 2014, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the self-petition on April 28, 2014, and the petitioner filed the instant appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner has overcome one, but not all, of the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The petitioner submitted detailed statements establishing that R-D- physically and sexually abused him. He described in probative detail that R-D- sexually abused him beginning in May 2007 and the physical problems he continues to experience as a result. He also provided specific details regarding a physical assault by R-D- during Thanksgiving weekend in 2008. According to the petitioner, R-D- accused him of being involved with some of the women at a party they attended and she slapped his face and threw a

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

³ The petitioner filed his self-petition pursuant to Section 204(a)(1)(A)(v) of the Act which provides in, pertinent part, that an alien living abroad who is the spouse a United States citizen, is eligible to file a self-petition under section 204(a)(1)(A)(iii)(I) of the Act if he or she demonstrates that the United States citizen subjected the alien to battery or extreme cruelty in the United States.

jar containing knives and spoons at him. He stated that a knife hit his arm and that R-D- scratched him with her long nails, causing scars of which he submitted several color photographs. The petitioner stated he left the United States in April of 2010 and attempted to commit suicide in May of 2011 and again in August 2012. He reasonably explained how difficult it was to discuss the abuse he suffered and that professional psychological counseling in Tanzania is not as developed as in the United States. The petitioner has provided credible and significant details regarding specific incidents of physical and sexual battery by R-D-. Upon a full review of all the relevant evidence, the petitioner has demonstrated by a preponderance of the evidence that R-D- subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The acting director's decision to the contrary will be withdrawn.

Section 204(c) of the Act

Nonetheless, the appeal cannot be sustained. 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) (permitting United States Citizenship and Immigration Services [USCIS] to rely on any relevant evidence in the record, including evidence from prior USCIS proceedings). 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 record shows that the petitioner married his first wife, A-G-, on December [REDACTED] Texas. On February 20, 2002, A-G- filed a Form I-130 visa petition on behalf of the petitioner. On January [REDACTED] the petitioner's marriage to A-G- was declared null and void by the District Court, 310 Judicial District, [REDACTED] County, Texas. On June 25, 2004, USCIS denied the Form I-130 relative petition based on A-G-'s marriages to four other men, all of whom she had also filed Form I-130 visa petitions. USCIS concluded that A-G-'s marriage to the petitioner was entered into solely for the purpose of obtaining an immigration benefit for the petitioner. The record shows that A-G- pled guilty to marriage fraud in the U.S. District Court for the Southern District of Texas and was sentenced to eight months imprisonment.

In his initial statement, dated July 1, 2011, the petitioner stated he divorced A-G-, his first wife, due to incompatibility, multiple relationships that A-G- had, an "unwelcome habit after the marriage," and maturity issues. According to the petitioner, he asked his divorce attorney to inform USCIS of his divorce from A-G-, but that his attorney did not do so. The petitioner claimed he was shocked when he later received a denial letter of the Form I-130 visa petition filed on his behalf by his second wife R-D-, determining that the petitioner had entered into a fraudulent marriage with A-G- to evade immigration laws. The petitioner asserted that he was never interviewed about it and in several subsequent statements, contended that A-G- was convicted of marriage fraud because the government had concrete evidence against her, but not against him. According to the petitioner, USCIS cannot and should not use A-G-'s conviction for marriage fraud against him. The petitioner submitted a separate statement in which he asserted he did not know anything about A-G-'s other marriages and that is why he obtained an annulment of his marriage to her. In another statement, the petitioner stated he would not knowingly and willingly marry a woman only to be her fifth husband. The petitioner also repeatedly asserted that he did not receive the NOID referenced in the director's denial and as such did not provide a response regarding the director's 204(c) determination. The petitioner did not, however, address or provide any probative details regarding his relationship with A-G- or his marital intentions in any of his letters submitted below. He did not address how he and A-G- met, their courtship, wedding ceremony, shared residence, or other shared experiences. There is no other relevant evidence in the record regarding his good-faith intentions in marrying A-G-.

On appeal, the petitioner incorrectly argues that because he never received the December 5, 2012, NOID, the director cannot apply 204(c) to the instant self-petition. Although the petitioner did not receive the December 5, 2012, NOID, he did receive a subsequent NOID requesting evidence that the petitioner's marriage to A-G- was bona fide and not entered into for purposes of evading immigration laws. The petitioner did not, below or on appeal, provide any substantive information regarding his relationship with A-G-. A review of the record combined with the petitioner's failure to provide documentation or probative testimony of the bona fides of his first marriage indicates that the petitioner's marriage to A-G- was entered into for the purpose of evading the immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

Entry into the Marriage with R-D- in Good Faith

In his initial July 1, 2011, statement, the petitioner described meeting R-D- through a classmate at [REDACTED]. The petitioner recounted being friends for six months before getting married on March [REDACTED] and that he wanted to marry R-D- because she was young, ambitious, independent, and career-oriented. He briefly recounted that R-D-'s mother was happy she was getting married because R-D- was a single mother, and that they got married in her mother's backyard. The petitioner submitted an additional statement, dated February 19, 2013, stating that the couple's 2006 and 2007 Internal Revenue Service (IRS) joint income tax returns help establish his good-faith entry into the marriage. However, the petitioner's statements failed to provide specific information regarding his relationship with R-D- and his intentions for marrying her. Apart from the abuse, his statements did not provide any probative details regarding the couple's courtship, wedding ceremony, shared residence, and shared experiences. The couple's 2006 and 2007 joint income tax returns, a joint car insurance policy, a joint residential lease, and joint bills show the petitioner and R-D- resided together and commingled some finances together. Nonetheless, without a more detailed, substantive description from the petitioner himself about his marital intentions, the preponderance of the evidence does not show the petitioner entered the marriage in good faith.

On appeal, the petitioner does not specifically address his good-faith entry into marriage with R-D-. The petitioner contends that the acting director's January 8, 2014, decision shows that he met all of the eligibility criteria except for item number 4 regarding joint residence. However, as the acting director acknowledged in the March 28, 2014, NOID, the petitioner did not receive the previously issued NOID and the previous decision of January 8, 2014 contained errors. The March 28, 2014, NOID provided the petitioner an additional opportunity to submit evidence regarding the bar to relief under section 204(c) of the Act, the petitioner's good-faith entry into marriage with R-D-, and her battery or extreme cruelty. A full review of the evidence submitted below and on appeal fails to establish that the petitioner married R-D- in good-faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has established that his wife, R-D-, subjected him to battery or extreme cruelty during their marriage. However, 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 he entered into his previous marriage with A-G- in good faith. The petitioner also failed to establish that he married his current wife, R-D-, in good faith. He 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.