

(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: JUL 07 2015

IN RE: 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:

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen husband.

The director denied the petition because the petitioner entered into a prior marriage to evade the immigration laws and section 204(c) of the Act, 8 U.S.C. § 1154(c) consequently bars approval of her self-petition. On appeal, the petitioner submits a brief and LexisNexis search results.

Applicable 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, 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

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

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who last entered the United States on November 23, 2003 as a nonimmigrant visitor. She married D-C-¹ a U.S. citizen, on [REDACTED] and they divorced on [REDACTED]. The petitioner later married H-A-³ a U.S. citizen, on [REDACTED]. On June 12, 2013, the petitioner filed the instant Form I-360 self-petition. The director subsequently issued a detailed Notice of Intent to Deny (NOID) after determining, based on substantial and probative evidence, that the petitioner is subject to section 204(c) of the Act which bars the approval of an immigrant petition for individuals who have previously sought to be accorded immediate relative or preference status by way of a marriage entered into for the purpose of evading the immigration laws. The petitioner timely responded with evidence that the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-360 petition and the petitioner timely appealed.

We review these proceedings *de novo*. The sole issue on appeal is the petitioner's eligibility for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. The petitioner's claims on appeal and the LexisNexis search results submitted therewith fail to overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

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

¹ Name withheld to protect the individual's identity.

² D-C- filed a Petition for Alien Relative (Form I-130) on behalf of the petitioner, which to date, has not been adjudicated [REDACTED].

³ Name withheld to protect the individual's identity.

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 Petitioner's Marriage to D-C-

The relevant evidence before the director included copies of joint leases, the petitioner's two affidavits, the affidavit of a friend, bank statements, child support documents, a telephone bill, Biographic Information sheets (Forms G-325A), and the petitioner's divorce decree from D-C-. In her NOID, the director informed the petitioner that she was not eligible for immigrant classification based on a qualifying relationship with a U.S. citizen because there was substantial and probative evidence in the record that she entered into the marriage with D-C- for the purpose of evading the immigration laws. The director noted several inconsistencies in the petitioner's claimed residential history with D-C-, including that during a 2009 interview with United States Citizenship and Immigration Services (USCIS) concerning the Form I-130, D-C- and the petitioner claimed to continue to reside together, when the evidence of record established that they had been separated since 2007.⁴ The joint lease for the property on [REDACTED] Illinois ([REDACTED]), for the period from January 1, 2006 through December 30, 2006, was inconsistent with other evidence showing that the petitioner resided with H-A- at [REDACTED] and not with D-C-,⁵ as claimed. The lease that the petitioner submitted to establish her joint residence with D-C- for the period from May 1, 2007 through May 1, 2008, on [REDACTED] Illinois ([REDACTED] listing [REDACTED] as the property manager, was not probative, as the property manager of [REDACTED] was [REDACTED].⁶ The director indicated that the fact that one of the joint bank statements was levied against D-C- for past due child support in February 2007, demonstrated that the petitioner and D-C- commingled some finances, but this information was not sufficient to overcome the evidence of record that the petitioner lived with H-A-, not D-C-, in 2007. Similarly, the child support letters addressed to D-C- at [REDACTED] in 2007 were inconsistent with the evidence establishing that the petitioner did not live with H-A- in 2007. The director found that the remaining bank statements did not reflect sufficient activity to demonstrate a joint financial commitment to the marriage. The director noted that a single telephone bill, dated in 2005, was insufficient to establish that the petitioner married D-C- in good faith.

Traditional forms of joint documentation are not required 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). Rather, 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." See 8 C.F.R. § 204.2(c)(2)(vii). Here, however, the affidavits of the petitioner and her friend do not establish her claim of entering into the marriage with D-C- in good faith because they contain insufficient information about her marital intentions and numerous unresolved inconsistencies with other evidence of

⁴ The divorce decree indicates that the petitioner and D-C- separated in [REDACTED]

⁵ Government records indicate that H-A- submitted an application in October 2006, listing his residence at the [REDACTED] address and the petitioner as her emergency point of contact.

⁶ Further research confirmed that [REDACTED] never managed the property at the [REDACTED] apartments, and that the lease submitted to establish the petitioner's joint tenancy with D-C- is fraudulent.

record. The petitioner submitted an affidavit in response to the director's NOID indicating that when she married D-C- in [REDACTED] he moved into her apartment on [REDACTED] Illinois [REDACTED], where they lived until November 2004, and they moved together in January 2005 to [REDACTED] where they lived together until they separated in [REDACTED]. The petitioner's statement that D-C- moved to her apartment is inconsistent with other evidence of record indicating that both the petitioner and D-C- moved to [REDACTED] in August 2004.⁷ The petitioner explained that there were problems in the marriage with D-C- beginning in 2006, and that she became friends with H-A- in 2006.⁸ The petitioner stated that she and D-C- shared an active bank account, a joint lease, and joint telephone bills. The petitioner did not, however, address the inconsistencies. [REDACTED] a friend of the petitioner, stated in a letter that he visited the petitioner and D-C- together as a married couple at [REDACTED] several times from 2005 to 2007. Neither the petitioner nor [REDACTED] provided probative detail of the petitioner's marital intentions toward D-C-.

On appeal, the petitioner asserts that the director incorrectly applied the preponderance of the evidence standard rather than substantial and probative as required by section 204(c) of the Act. However, this claim conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When determining whether the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1).

The petitioner further asserts that the director's decision is deficient in that it does not analyze the totality of the reliable evidence. The petitioner points to the director's typographical errors in referring to the property at [REDACTED] and states that the director relied on information which has not been made available to the petitioner. The petitioner also indicates that USCIS has access to the Form I-130 documentation previously submitted into the record. The petitioner submits informational records from LexisNexis indicating that the petitioner and D-C- were associated with common addresses and each are listed as possible relatives of the other. Contrary to the petitioner's assertions, the record shows that the director issued a detailed NOID notifying the petitioner that the record indicated she was subject to section 204(c) of the Act and giving her the opportunity to submit evidence of the bonafides of her prior marriage. The record shows that in denying the self-petition, the director reviewed all the submitted and relevant

⁷ The petitioner's Form G-325A, signed November 19, 2004, indicates that she resided on [REDACTED] from November 2003 through August 2004 and that in August 2004, she moved to [REDACTED]. D-C-'s Form G-325A indicates that he also moved to [REDACTED] in August 2004.

⁸ This statement is inconsistent with the petitioner's first affidavit, submitted in support of the Form I-360 self-petition, in which she indicated that she first met H-A- in 2008, and started dating H-A- in 2009.

evidence and independently determined that it did not establish the petitioner's eligibility under the applicable standard of proof. We find no error in the director's decision.

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). 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. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

De novo review of the record, in its entirety, shows that there is substantial and probative evidence that the petitioner married D-C- for the purposes of evading the immigration law. The petitioner's brief affidavit, submitted in response to the NOID, lacked meaningful detail and substantive information regarding her courtship with D-C-, their marriage, joint assets and liabilities or any of their shared experiences. The petitioner's testimony that D-C- first moved into her apartment in August 2004 is inconsistent with her Form G-325A, on which she indicated that she moved to a new location in August 2004. The 2006 lease for [REDACTED] is not probative, in that H-A- lived with the petitioner in 2006, as he noted on an application submitted to the United States government. The petitioner provided conflicting information about when she first met and started dating H-A- in her affidavit, submitted in response to the NOID (2006), and in support of the Form I-360 self-petition (2008 and 2009), and these discrepancies remain unresolved on appeal. The petitioner testified during an interview with USCIS in 2009 that she still lived with D-C-, which she now retracts on appeal, stating that she was frustrated with the long wait for the Form I-130 interview. The petitioner has not addressed the director's stated concern that the lease submitted to establish that she and D-C- resided at [REDACTED] in 2007 was issued by a management company that never managed the property. The petitioner also submitted copies of joint bank statements from 2005, 2006 and 2007, collection records for past due child support payments, and a levy against their joint account dated in 2007. This financial information does not resolve or address any of the inconsistencies identified by the director. While the petitioner shared a bank account and a telephone number with D-C- briefly in 2005, substantial and probative evidence in the record shows that the petitioner was not truthful about her first residence with D-C- at [REDACTED] the claimed 2006 joint residence at [REDACTED] or the claimed 2007 joint residence at [REDACTED]. The petitioner was given the opportunity to address these inconsistencies, both in response to the NOID and on appeal, but has not explained the reasons for her lack of candor.

We have conducted an independent *de novo* review of the entire record on appeal and found substantial and probative evidence establishing that the petitioner entered into her prior marriage with D-C- in an attempt to evade the immigration laws. Consequently, she is subject to the bar to approval of her self-petition under section 204(c) of the Act.

Ineligibility for Immediate Relative Classification

Section 204(a)(1)(A)(iii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility for immediate relative classification based on his or her relationship to the U.S. citizen abuser. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explains that such eligibility requires the petitioner, in part, to comply with, section 204(c) of the Act. As discussed above, the petitioner here has failed to comply with section 204(c) of the Act. She is consequently ineligible for immediate relative classification based on her marriage to H-A- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's ground for denial. Approval of the self-petition is barred by section 204(c) of the Act because the record demonstrates that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. The petitioner has not demonstrated that she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because she is subject to the bar to the approval of her petition under section 204(c) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.