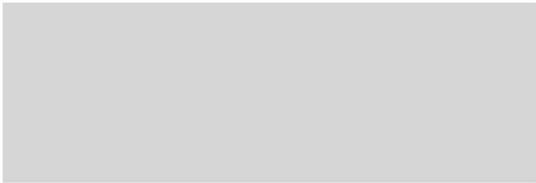




U.S. Citizenship  
and Immigration  
Services

(b)(6)



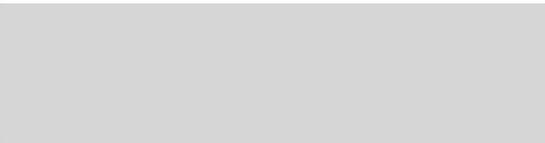
DATE: **JUN 05 2015**

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, Vermont Service Center (the director), denied the immigrant visa 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 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.

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.

*Applicable Law*

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 U.S. 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, 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].

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 eligibility requirements 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)(1), which 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

- (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.

In addition, the regulations require that to remain eligible for immigration classification, a self petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*

- (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 the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

*Facts and Procedural History*

The petitioner, a citizen of the Gambia, entered the United States on June 5, 2000 on an F-1 nonimmigrant visa. The petitioner married R-W<sup>1</sup>, a U.S. citizen, on [REDACTED] 2005 in North Carolina. R-W- filed an immigrant visa petition on behalf of the petitioner on July 11, 2005. On December 19, 2007, the claimed couple appeared for an interview at U.S. Citizenship and Immigration Services (USCIS) offices in [REDACTED] North Carolina. During the interview, R-W- executed a sworn statement indicating that he had married the petitioner solely for immigration purposes, and withdrew the Form I-130 immigrant petition. They divorced in [REDACTED] 2009. USCIS placed the petitioner in immigration proceedings on January 15, 2008. On [REDACTED] 2010, the petitioner married J-B<sup>2</sup>, a U.S. citizen, in North Carolina. He filed a Form I-130 immigrant petition on behalf of the petitioner, which was denied on March 14, 2011 as barred by section 204(c) of the Act, based on the petitioner's prior marriage to R-W-. The petitioner was ordered removed to the Gambia and the Board of Immigration Appeals subsequently affirmed the decision to deny the Form I-130 based on section 204(c) of the Act. On [REDACTED] 2012, the petitioner and J-B- divorced.

The petitioner filed the instant Form I-360 self-petition on January 28, 2014. The director issued a Notice of Intent to Deny (NOID) the petition based on sections 204(c) and 204(g) of the Act, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition as barred by section 204(c) of the Act. The petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's ground for denial. In addition, the record fails to establish the bona fides of the petitioner's marriage to J-B- by clear and convincing evidence, and the petition is thus also barred by section 204(g) of the Act. The appeal will be dismissed for the following reasons.

*Section 204(c) of the Act based on the Petitioner's Marriage to R-W-*

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).

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

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

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

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.

Here, the petitioner's file (administrative record) contains a detailed sworn statement prepared by R-W- indicating that the purpose of the marriage was to evade the immigration laws. R-W- stated that he married the petitioner to help her obtain a green card. He further stated that he and the petitioner never resided together, never had sexual relations, and that the petitioner added R-W-'s name to her lease and bills for the purpose of providing them to USCIS. R-W- indicated that the petitioner told him the immigration process would take one to one and a half years, but they were almost three years into the proceedings, and he regretted his decision to go along with the scheme.

In the NOID, the director notified the petitioner of R-W-'s statement, and requested that she submit evidence to establish that her marriage to R-W- was not entered into for the purpose of evading the immigration laws. In response, the petitioner submitted an affidavit from R-W- retracting his prior statement. In his retraction, R-W- indicated that he met the petitioner while working at a grocery store in 2001. He stated that they dated on and off until October 2004, when they dated seriously until they married in 2005. R-W- stated that he moved in with the petitioner and lived with her until they had an argument in September 2005. He recalled that they "fell off for a while," but lived together intermittently between September 2005 and December 2007. R-W- stated that he felt that the USCIS officer who interviewed him was hostile and threatened to put him in jail if he did not confess to the fraud and withdraw his petition. He further stated that he and the petitioner held themselves out to the world as a married couple, and engaged in sexual relations.

In response to the NOID, the petitioner requested that the director consider the evidence of record previously submitted in prior proceedings to establish the bona fides of her marriage to R-W-. The record contains joint lease agreements for an apartment on [REDACTED] where the petitioner claimed to have resided since 2003, for the periods from August 1, 2005 to July 31, 2006 and August 1, 2006 to July 31, 2007. The record also contains cable television bills in the names of the petitioner and R-W-, which do not include the year of issue, and joint checking statements with minimal account activity. The record contains a copy of joint federal income tax returns for 2004 and 2005, although the couple was not married in 2005, and also contains a federal income tax return for 2005 on which R-W- filed as "single." In light of R-W-'s sworn statement indicating that he never resided with the petitioner, and that she added him to her bills and the lease for the purpose of obtaining documentation for USCIS, the minimal traditional documentation of the bona fides of the petitioner and R-W-'s marriage is insufficient to establish that the marriage was not entered into for the purpose of evading the immigration laws. The irregular tax documentation in the file reinforces R-W-'s sworn statement indicating that the petitioner produced joint documentation for the purpose of making the relationship appear legitimate to USCIS. R-W-'s retraction contains insufficient detail regarding his marriage to the petitioner to overcome his prior sworn statement.

The petitioner's personal affidavits, submitted in support of her Form I-360 petition and in response to the director's NOID, are inconsistent with statements made by R-W- in his retraction. In her initial affidavit, the petitioner stated that she and R-W- first dated for three months after meeting in 2001. She indicated that they dated again during January 2003, and did not resume their

relationship until [REDACTED] 2005, the same month they married. In her second affidavit, the petitioner affirmed that they did not date seriously until January 2005. In contrast, R-W- stated that they dated seriously beginning in October 2004. Neither the petitioner's affidavits, nor R-W-'s retraction, contain a substantive description of the claimed couple's courtship, wedding ceremony, shared residence, and experiences. The petitioner recounted that R-W- declined to file joint taxes with her, although there are copies of joint income tax returns in the administrative record. The petitioner also indicated that R-W- was physically and sexually abusive, and threatened to "mess up" her immigration interview if she did not pay him. The petitioner stated that in September 2005, R-W- raped her and she bled so profusely that she had to go to the hospital. The petitioner stated that she lost her documentation from her hospital visit, but did not provide any explanation as to why she was unable to obtain a new copy of the records. The petitioner also claimed that she was pregnant with R-W-'s child at the time of her immigration interview in December 2007, and subsequently had an abortion. In response to the NOID, the petitioner submitted a copy of a request for medical records from [REDACTED] requesting records for December 2007. However, the petitioner did not provide copies of any medical records obtained from this request.

The discrepancies in the petitioner's statements, R-W-'s retraction, and the evidence of record diminish the credibility of the petitioner's statements and R-W-'s retraction. On appeal, the petitioner did not provide any further evidence to establish the bona fides of her marriage to R-W-. When viewed in the totality, the record contains substantial and probative evidence that the petitioner married R-W- for the primary purpose of evading the immigration laws, and the documentation of record does not overcome that finding. Accordingly, approval of the instant self-petition remains barred by section 204(c) of the Act.

#### *Good-Faith Entry Into Marriage with J-B- and Section 204(g) of the Act*

Beyond the director's decision, the petitioner has failed to establish that she married J-B- in good faith either by a preponderance of the evidence or by clear and convincing evidence as required to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act.<sup>3</sup> At the time the petitioner married J-B-, she was in removal proceedings and had not departed the United States under an order of removal, nor had she resided outside of the United States for the requisite two-year period; thus, she remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). She must therefore establish eligibility for the bona fide marriage exemption at section 245(e) of the Act to demonstrate eligibility for immediate relative classification.

The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B), states, in pertinent part:

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and the [abused spouse];
- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

Although 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 exemption 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 (5<sup>th</sup> 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, 375 (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.

*De novo* review of the relevant evidence does not establish by the preponderance of the evidence or by clear and convincing evidence that the petitioner entered into her marriage with J-B- in good faith. With her initial Form I-360 submission, the petitioner provided a personal affidavit in which she briefly stated that she met J-B- at a coffee shop in September 2009, and that they married in [REDACTED] 2010. The petitioner stated that J-B- was nice before they married, cooked, and brought lunch to her at work. In her second affidavit, the petitioner elaborated on their first meeting. With respect to their four-month courtship, the petitioner stated generally that they watched movies together, went for drives, and to the mall. The petitioner described J-B-'s marriage proposal, and stated that they married at the courthouse to save money. The petitioner did not substantively describe their shared residence or experiences beyond the abuse. The petitioner provided one photograph of her and J-B-, and a photograph of what the petitioner stated is a birthday gift he gave to her. The record contains joint leases covering the periods of [REDACTED] 2010 to [REDACTED] 2011, and [REDACTED] 2011 to [REDACTED] 2012. To establish good-faith entry into marriage, 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." 8 C.F.R. § 204.2(c)(2)(vii). Here, the record lacks substantial probative testimony of the petitioner's courtship, wedding ceremony, shared residence and experiences sufficient to establish the petitioner's good faith entry into marriage with J-B- either by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or by clear and convincing evidence as required to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act from the bar at section 204(g) of the Act.

### *Conclusion*

On appeal, the petitioner has not overcome the director's ground for denial. Approval of this 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. In addition, the petitioner has not established that she entered into the marriage with her second U.S. citizen husband in good faith and she has not established eligibility for the exemption from the bar at section 204(g) of the Act under section 245(e)(3) of the Act. 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 bars to the approval of her petition under sections 204(c) and 204(g) 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.

**ORDER:** The appeal is dismissed.