



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 30 2015**

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

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

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 The director's decision will be withdrawn and the matter will be remanded to the director.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition, finding that the petitioner did not establish a qualifying spousal relationship and the corresponding eligibility for immigrant classification. The director also determined that the petitioner did not demonstrate that he entered into marriage with his wife in good faith, resided with her, and that she subjected him to battery or extreme cruelty. The director further concluded that approval of the instant petition was barred under sections 204(c) and 204(g) of the Act.

On appeal, the petitioner submits a brief and additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B) 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under . . . section 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

- (A) Is the spouse of a . . . lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under . . . section 203(a)(2)(A) of the Act based on that relationship [to the lawful permanent resident or U.S. citizen spouse].

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser.[]

In regards to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(b)(17)(ii) states:

*Assisting self-petitioners who are spousal-abuse victims.* If a self-petitioner filing a petition under section . . . 204(a)(1)(B)(ii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS [U.S. Citizenship and Immigration Services] will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Peru, last entered the United States on May 4, 2001, as a nonimmigrant visitor. On March 22, 2007, the petitioner was placed into removal proceedings, which remain pending. The petitioner thereafter married J-A-<sup>1</sup>, a lawful permanent resident of the United States, on [REDACTED] 2012 in New York. He filed the instant Form I-360 self-petition on September 16, 2014 based on his relationship to J-A-. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has overcome two of the director's grounds for denial, having established the requisite qualifying spousal relationship to a lawful permanent resident of the United States and his corresponding eligibility for immigrant classification based on that relationship. However, because the petitioner remains ineligible on other grounds not fully addressed by the director, the matter will be remanded for further action.

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

*Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

The director erred in determining that the petitioner did not establish a qualifying spousal relationship with a lawful permanent resident of the United States, and therefore, also did not demonstrate his corresponding eligibility for immigrant classification under section 203(a)(2)(A) of the Act. The petitioner submitted below a marriage certificate showing that he is married to J-A-; but did not submit any evidence of J-A-'s lawful permanent resident status and asserts that he did not have any such evidence in his possession. The petitioner proffered a copy of his wife's divorce judgment from her prior marriage, reflecting her former married name, J-C-<sup>2</sup>. The director determined that evidence of record revealed that J-A- entered the United States without inspection and did not have lawful permanent resident status.

Pursuant to the regulation at 8 C.F.R. 103.2(b)(17)(ii), United States Citizenship and Immigration Services (USCIS) will verify the immigration status of an abuser through a check of its records where possible. On appeal, a search of USCIS records was conducted under the petitioner's spouse's former married name, J-C-. The search revealed that the petitioner's wife is and has been a lawful permanent resident of the United States since April 29, 1991. Accordingly, based upon our review, the record demonstrates that the petitioner is married to a U.S. lawful permanent resident. The petitioner has, therefore, established a qualifying spousal relationship with a lawful permanent resident of the United States and the corresponding eligibility for immigrant classification based on that relationship, as required by section 204(a)(1)(B)(ii)(II)(aa)(AA), (cc) of the Act. The director's determinations to the contrary are, hereby, withdrawn.

*The Petition Must Be Remanded*

Notwithstanding our determination, the petition is not approvable because the director also determined that the petitioner did not establish that he entered into his marriage with J-A- in good faith, resided with her, that she subjected him to battery or extreme cruelty, and that he is a person of good moral character. The director further concluded that section 204(c) of the Act barred approval of the instant petition because the petitioner entered into a prior marriage with his former U.S. citizen spouse, S-M-<sup>3</sup>, for the purpose of evading U.S. immigration laws. In addition, the director found that because the petitioner married J-A- after he was placed into removal proceedings, he is subject to section 204(g) of the Act, which bars approval of the petition unless the petitioner establishes the bona fides of his marriage to S-M- by clear and convincing evidence. Section 245(e)(3) of the Act. The director did not, however, provide any analysis of the evidence of record to support these conclusions and the petitioner was not previously notified of, or provided an opportunity to overcome, any deficiencies in the record below. Accordingly, the matter must be remanded to the director to provide the petitioner the opportunity to demonstrate his eligibility for the benefit sought, and for issuance of a new decision.

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

<sup>3</sup> Name is withheld to protect the individual's identity.



*Conclusion*

The petitioner has established that he has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(I)(aa) and (cc) of the Act. However, as the petition is not approvable based on the present record, the matter will be remanded to the director for further action consistent with this decision.

**ORDER:** The December 22, 2014 decision of the director is withdrawn. The matter is remanded to the director for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the AAO for review.