



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 14 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:



INSTRUCTIONS:

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 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 her United States citizen spouse.

The director denied the petition, concluding that section 204(c) of the Act, 8 U.S.C. § 1154(c), bars approval of the petition, because the petitioner had previously attempted to enter into a prior marriage for the purpose of evading the immigration laws. The director further determined that the petitioner had failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage. The petitioner filed a motion to reopen and reconsider the denial of her petition. The director granted the motion but again denied the petition, finding that the petitioner had demonstrated battery and extreme cruelty as required but had not overcome evidence in the record that the bar at section 204(c) of the Act applies to her petition. 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1). The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth 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.

\* \* \*

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Nigeria who last entered the United States on April 4, 2002<sup>1</sup>, on a B-2 nonimmigrant visitor's visa. Shortly thereafter, she married C-D-<sup>2</sup>, a citizen of the United States on [REDACTED], 2002 in [REDACTED], Florida. C-D- submitted a Form I-130, Petition for Alien Relative, on behalf of the petitioner the very same day. On November 13, 2003, the Form I-130 petition was denied for failure to appear at the couple's scheduled interview. The petitioner and C-D- were divorced on [REDACTED] 2004.

The petitioner subsequently married R-B-, also a U.S. citizen, on [REDACTED], 2005, in [REDACTED], New York. R-B- and the petitioner had a son born on [REDACTED] 2008, but they were eventually divorced on [REDACTED] 2012. In 2004, U.S. Immigration and Customs Enforcement (USICE) officials identified the petitioner as an unindicted co-conspirator in a marriage fraud ring that was being investigated. The record indicates that the primary target of the marriage ring operation identified the petitioner as one of the individuals whose marriages he arranged. The record contains an original receipt for \$3,000 from June 3, 2002 issued to the petitioner by [REDACTED], an entity operated by the target of the investigation, for preparation of immigration forms and notary service. Although the head of the marriage ring was arrested and convicted for his role, the petitioner herself was never charged. On June 18, 2007, a Notice to Appear was issued against the petitioner, placing her into removal proceedings, which remain pending.

The petitioner filed the instant Form I-360 self-petition on February 28, 2011 based on her relationship with R-B-. The director issued a Notice of Intent to Deny (NOID), in part, on the basis that the record indicated that the petitioner was subject to the bar at section 204(c) of the Act for having previously entered into a prior marriage solely for the purpose of evading the immigration laws. The petitioner responded with additional evidence, which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition. On motion, the director again denied the petition. The petitioner timely appealed.

We review these matters on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial and 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:

<sup>1</sup> The record contains inconsistent information as to the petitioner's date of admission. However, the petitioner's Form I-94, Departure Record, shows that she was admitted to the United States on April 4, 2002.

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

[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.

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an individual who has attempted or conspired to enter into a marriage for the purpose of evading immigration laws. *See Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990) (citing *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988)). An adverse section 204(c) determination requires the denial of any subsequent visa petition for immigrant classification filed on behalf of such an individual, regardless of whether he or she ultimately received a benefit through the attempt or conspiracy. *See Tawfik*, 20 I&N Dec. at 167-68; *see also Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978) (section 204(c) determination is to be made by the District Director on behalf of the Attorney General<sup>3</sup> during the adjudication of a subsequent visa petition). The evidence of the attempt or conspiracy to enter into a marriage in order to evade immigration laws must be documented in the individual's file and must be "substantial and probative." *See Tawfik*, 20 I&N Dec. at 167. United States Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence originating from prior USCIS proceedings involving the individual. *See id.*; *Rahmati*, 16 I&N Dec. at 539. 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.

The director here correctly concluded that section 204(c) of the Act bars approval of the instant petition. The record shows that the petitioner was married to her first U.S. citizen husband, C-D-, approximately two months after her admission and that C-D- filed a Form I-130 petition on the petitioner's behalf the same day they were married. Further, an individual, who was convicted for having organized fraudulent marriages, identified the petitioner's marriage as one that he arranged. The record indicates

<sup>3</sup> This authority is now exercised by the Secretary of the U.S. Department of Homeland Security (Secretary).

he organized over 100 fraudulent marriages. The record further contains a payment receipt issued to the petitioner from an entity operated by this individual three days prior to her marriage to C-D- and the filing of the Form I-130. In the NOID, the director noted that the petitioner was subject to section 204(c) of the Act because USCIS records indicated that her marriage to C-D- was entered into for the purpose of evading the immigration laws. Accordingly, the director specifically requested documentation that the petitioner married C-D- in good faith. The petitioner's statement in response to the NOID addressed only her good moral character in general terms and did not address her marriage to C-D- or her good faith intentions in marrying him. On appeal, the petitioner again did not submit any new or updated statement to address the evidence in the record showing that she entered into marriage with C-D- solely to obtain immigration benefits.

In response to the NOID and on motion, the petitioner submitted notarized statements from the petitioner's sister, [REDACTED] and brother, [REDACTED], respectively, to address the petitioner's good faith intentions in marrying C-D-. Ms. [REDACTED]'s statement does not indicate that she ever met C-D- and did not provide in any probative detail specific occasions or shared experiences with the petitioner and C-D- showing the petitioner's good faith intent. Similarly, Mr. [REDACTED]'s statement on motion indicates that he spoke with C-D- several times over the phone and saw the couple during a visit to Florida. He asserted that the petitioner and C-D- loved each other and planned a future together. However, he too provides no substantive information about the petitioner's relationship with C-D- and provides no probative details about his interactions with the couple.

On appeal, the petitioner contends that she was not afforded an opportunity to rebut the allegations by investigators that she was a co-conspirator in the marriage fraud. For the purposes of these proceedings, however, the petitioner was afforded an opportunity to address and provide rebuttal evidence in response to the derogatory evidence regarding her marriage to C-D- before USCIS. Notably, the petitioner chose not to provide any statement in response to the NOID, on motion, or on appeal to address and rebut evidence indicating that she entered into marriage with C-D- for the sole purpose of evading immigration laws. Notably, her appellate brief recites caselaw regarding a petitioner's burden to establish the *bona fides* of a marriage in alien relative petition proceedings, but she does not address the *bona fides* of her own marriage to C-D-. Although she asserts that she presented credible evidence of the *bona fides* of her marriage to C-D-, she does not identify the referenced evidence in the record, and as discussed, the petitioner and her siblings' statements are insufficient in establishing her good faith intentions. Accordingly, an independent and *de novo* review of the record establishes that the derogatory evidence demonstrating that the petitioner attempted to enter into a marriage with C-D- for the purpose of evading the immigration laws is substantial and probative and is documented in the record. *Tawfik*, 20 I&N Dec. at 167. Consequently, section 204(c) of the Act applies to bar approval of the instant petition.

### *Conclusion*

The petitioner has failed to overcome substantial and probative evidence in the record demonstrating that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. Approval of the petition is therefore statutorily barred pursuant to section 204(c) of the Act.

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*NON-PRECEDENT DECISION*

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, she has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.