



U.S. Citizenship
and Immigration
Services

(b)(6)



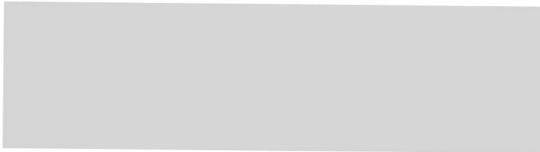
DATE: **MAY 14 2015**

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)

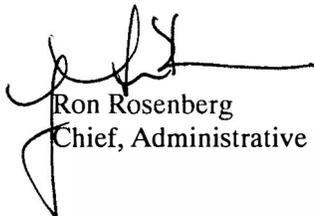
ON BEHALF OF PETITIONER:



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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the 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 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 under section 204(c) of the Act, concluding that the petitioner entered her previous marriage for the purpose of evading the immigration laws. In addition, the director found that the petitioner failed to establish that she resided with her abusive spouse, and that she married him in good faith. 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 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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 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.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 regulation at 8 C.F.R. § 204.2(c)(1)(iv), which states, in pertinent part: "*Eligibility for immigrant classification*. A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act."

Facts and Procedural History

The petitioner, a citizen of Ghana, entered the United States on September 23, 1996 as a nonimmigrant visitor. She married R-R¹, a U.S. citizen, on [REDACTED], 2003, in [REDACTED], Virginia. R-R- filed a Form I-130 immigrant visa petition on behalf of the petitioner, and the couple appeared for an immigration interview. The couple's attorney subsequently requested that a second scheduled interview be postponed due to R-R-'s incarceration. U.S. Citizenship and Immigration Services (USCIS) denied R-R-'s Form I-130 petition on November 3, 2009, primarily on the ground the couple had divorced in February of that year. The decision also noted a lack of evidence of the bona fides of the marriage, and referenced notations made by the interviewing officer that suggested the marriage may have been entered into solely for the purpose of procuring an immigration benefit.

The petitioner married R-H², a U.S. citizen, on [REDACTED] 2009, in [REDACTED] Maryland. R-H- filed a Form I-130 immigrant petition on behalf of the petitioner, which USCIS subsequently denied based on

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

section 204(c) of the Act and discrepancies in R-H-'s and the petitioner's immigration interview. In a brief decision, the Board of Immigration Appeals upheld the denial of R-H-'s immigrant visa petition. On October 16, 2012, the petitioner filed the instant Form I-360 self-petition. Upon review of the submission, the director issued requests for additional evidence (RFEs) of the petitioner's joint residence with R-H- and her good-faith entry into her second marriage. The petitioner responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director issued a Notice of Intent to Deny (NOID), referencing the denial of R-R-'s Form I-130, and indicating that section 204(c) of the Act barred approval of the Form I-130. The director further informed the petitioner that the evidence of record was insufficient to establish that she resided with R-H- and that she married him in good faith. The petitioner timely responded to the NOID with additional evidence, and the director denied the petition. The petitioner filed a motion to reopen and reconsider the denial, which the director granted and affirmed the prior decision. The petitioner timely appealed.

We review these proceedings *de novo*. On appeal, the petitioner demonstrates that she is not subject to the requirements of section 204(c) of the Act. However, as the petitioner has not established that she resided with R-H- during their marriage and married him in good faith, the appeal will be dismissed.

Section 204(c) of the Act

The director denied the instant self-petition pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), which 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.

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). United States Citizenship and Immigration Services (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).

The director was required to make an independent determination regarding whether the petitioner entered into her marriage to R-R- for the purpose of evading the immigration laws. *See Matter of Rahmati*, 16 I&N Dec. at 539. In the NOID, the February 28, 2014 decision, and the June 24, 2014 decision on motion, the director referenced only the determination in the November 3, 2009 denial of R-R-'s immigrant petition, and appears to have given conclusory effect to that determination. The evidence of the attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws must be contained in the alien's file. 8 C.F.R. § 204.2(a)(1)(ii). Further, that evidence must be substantial and probative. *Id.* A review of the petitioner's entire administrative record reveals that the evidence relied upon by the director is not substantial and probative of the petitioner's intent to enter into marriage with R-R- for the purpose of evading the immigration laws. Thus, upon *de novo* review of the petitioner's administrative record, we find that section 204(c) of the Act does not bar approval of the instant self-petition. This portion of the director's decision is withdrawn.

Joint Residence and Good-Faith Entry into the Marriage

The director's petition and motion denial decisions state that the petitioner did not demonstrate that she resided with R-H- or married him in good faith. The petitioner's appellate brief, however, does not address the director's determination on either of these two issues, and instead focuses on the application of the bar to the approval of the petition at section 204(c) of the Act. As the petitioner does not identify specifically any erroneous conclusion of law or statement of fact noted by the director regarding her joint residence with R-H- or entry into her marriage in good faith, we affirm these portions of the director's decisions. Consequently, the petitioner has not established that she resided with R-H- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, or married him in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. *See* 8 C.F.R. § 103.3(a)(1)(v)(providing for the summary dismissal of an appeal where a petitioner does not identify an error of law or fact in the underlying denial decision).

Conclusion

On appeal, the petitioner has established that her self-petition is not subject to the bar at section 204(c) of the Act. However, as she has not demonstrated that she resided with R-H- or entered into her marriage with him in good faith, the petition cannot be approved.

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NON-PRECEDENT DECISION

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In these proceedings, the petitioner bears the burden of proof to establish eligibility. 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.

ORDER: The appeal is dismissed. The petition remains denied.