



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 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 pursuant to 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was a person of good moral character, and further found that approval of the self-petition was barred by section 204(c) of the Act.

On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been

convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

In addition, the regulation at 8 C.F.R. § 204.2(c)(1)(iv) 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."

Pertinent Facts and Procedural History

The petitioner, a citizen of Kenya, entered the United States on August 22, 2003 as a nonimmigrant student visitor. On March 18, 2009, the U.S. Department of Homeland Security (DHS) issued the petitioner a Notice to Appear (NTA), placing her in removal proceedings for remaining in the United States beyond her authorized period of stay, and failing to comply with the terms of her nonimmigrant classification. The petitioner married D-C-¹, a U.S. citizen, on [REDACTED] 2009 in

¹ Name withheld to protect the individual's identity.

Missouri. D-C- subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner. On March 30, 2011, the couple attended an interview at U.S. Citizenship and Immigration Services (USCIS) offices in St. Louis. The interviewing officer noted discrepancies in the couple's testimony, and referred the case for further verification. Thereafter, on February 10, 2012, USCIS officers visited the couple's residence of record at the [REDACTED] in [REDACTED] Missouri. The officers met with leasing office staff members, who provided a copy of the petitioner's rental application and the petitioner's then current lease. The officers attempted to visit the petitioner and D-C- at their address of record, but neither was present at the apartment when the officers arrived. The following day, the officers visited a prior address of record for D-C-, and spoke with D-C-'s father. D-C-'s father informed the officers that he was unaware that his son was married, and could not clearly identify a photograph of the petitioner. D-C-'s father called D-C- to come to the house, who shortly arrived accompanied by his mother. The officers advised D-C- that the petitioner was in immigration proceedings, and that their marriage was suspected of being fraudulent. D-C- then agreed to withdraw his Form I-130 petition. The USCIS officers reported that as D-C- attempted to write his withdrawal, it did not appear that he was completely literate. D-C-'s mother then wrote the withdrawal on behalf of her son. The withdrawal was read out loud to D-C-, who subsequently signed it. The written reasons for the withdrawal were stated as follows: "She offered me 7 thousands for marriage and only gave me 5 hundred a couple of month after wedding never saw or spoke again and my son said never lived with her. Never harmed her in any way. Never consummated the wedding." The petitioner and D-C- divorced on [REDACTED] 2012.

On [REDACTED] 2012, the petitioner married M-M-², a U.S. citizen, in [REDACTED] Texas, and filed the instant Form I-360 self-petition on June 17, 2013.³ On August 27, 2013, the petitioner appeared at the immigration court for a hearing on whether she was inadmissible to the United States for falsely representing to be a U.S. citizen under section 212(a)(6)(C)(ii)(I) of the Act. In a written decision, dated March 25, 2014, the immigration judge found that she was inadmissible, and denied all applications for relief from removal. The judge ordered the petitioner removed Kenya. The petitioner subsequently filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (Board), which has not yet been decided.

The director issued a Notice of Intent to Deny (NOID) the instant Form I-360 on June 10, 2014. In the NOID, the director addressed the petitioner's credibility, the applicability of section 204(c) of the Act, and the petitioner's failure to demonstrate her good moral character. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility for the benefit sought. The director denied the petition, and the petitioner timely appealed. On appeal, the petitioner submits a brief.

² Name withheld to protect the individual's identity.

³ USCIS records indicate that at the time the Form I-360 self-petition was filed, M-M- was a lawful permanent resident of the United States, but subsequently became a naturalized U.S. citizen while the Form I-360 was pending.

We review these proceedings *de novo*. A full review of the record reveals that the petitioner has demonstrated her good moral character, but that section 204(c) of the Act bars approval of the instant petition. The appeal will be dismissed for the following reasons.

Good Moral Character

Upon *de novo* review of the record, the petitioner has established her good moral character. The director erred by imputing an immigration judge's credibility finding to the instant proceeding. The director further erred in her determination that perceived false claims to U.S. citizenship, and the applicability of section 204(c) of the Act to the instant petition, indicated that the petitioner did not establish her good moral character.

The petitioner's administrative record contains three Form I-9s, Employment Eligibility Verification, all of which are versions revised on June 5, 2007 or earlier. Each Form I-9 contains the petitioner's information, and appears to have been signed by the petitioner. On each, a box is checked that states that she is a "citizen or national of the United States." During her immigration removal proceedings, the petitioner maintained that she indicated that, if she had been the person that checked the box (which she was not sure), she was checking off that she was a national of the United States because she was misinformed as to what that meant. The petitioner never admitted in testimony to representing that she was a U.S. citizen.

We first observe that the Board has held that a person who has made a false claim to citizenship on a Form I-9 is not precluded from establishing good moral character under section 101(f) of the Act. *Matter of Guadarrama*, 24 I & N Dec. 625, 627 (BIA 2008). However, the facts in this matter do not establish that the petitioner made a false claim to citizenship. The version of the Form I-9 at issue in the instant matter contained a check-box for a person to state that he or she was "a citizen or a national of the United States" (emphasis added). The Form I-9 was revised in 2008 to have separate check-boxes for "citizen" and "national" to eliminate the ambiguity. Documents Acceptable for Employment Eligibility Verification, 73 Fed. Reg. 76505, 76508 (Dec. 17, 2008). It is thus apparent that a claim to be a "national" of the United States is not the same as a claim to be a "citizen." In *Theodros v. Gonzales*, the Fifth Circuit found that an individual who had checked off a similar statement had made a false claim to citizenship because he *also stated in oral testimony* that he falsely represented himself to be a citizen to obtain employment. 490 F.3d 396, 401 (5th Cir. 2007). The court distinguished that case from other matters where the sole evidence of false representation of citizenship was checking off a box indicating that one was a citizen or national of the United States. *Id.* at 401 n.7. Here, the petitioner maintained in oral testimony that she checked off that she was a "national" of the United States because she was misinformed as to what the term meant. Thus, the record does not establish that she has made a false claim to U.S. citizenship.

In addition, the director inappropriately conflated good moral character with a finding of the applicability of the section 204(c) bar to this matter. Here, the petitioner submitted the requisite police clearances to demonstrate that she does not have a criminal record. She also provided numerous affidavits attesting to her good moral character. When viewed in the aggregate, the preponderance of the relevant evidence establishes the petitioner's good moral character as required

by section 204(a)(1)(A)(iii)(II)(bb) of the Act and explained in the regulation at 8 C.F.R. §§ 204.2(c)(1)(vii), (2)(v). The portion of the director's decision finding to the contrary is hereby withdrawn. However, as sections 204(c) and (g) of the Act bar approval of the instant petition, as described below, the appeal will not be sustained.

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). 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).

Here, the director considered documentation found in the petitioner's file, including D-C-'s withdrawal of his Form I-130 petition, in which he indicated that the petitioner paid him to marry her, and that he never saw or spoke to her again after she paid him only part of the agreed upon amount. The director also considered lack of consistent testimony at the Form I-130 interview, and a report from the investigation into D-C-'s Form I-130 including information obtained at the petitioner's leasing office,

and the fact that D-C-'s father told a USCIS investigator that he was unaware that his son was married. The director issued a NOID based on this information.

In response to the NOID, the petitioner submitted evidence to establish the bona fides of her marriage to D-C-. In an affidavit dated February 25, 2014, D-C- stated that he was pressured into signing the withdrawal by immigration officials and his mother. He indicated that he was heavily medicated at the time that he signed the withdrawal. D-C- briefly stated that he loved the petitioner and that the marriage was genuine, but it did not work out.

The petitioner also provided affidavits from friends [REDACTED]. The brief affidavits attest generally to the bona fide nature of the petitioner's and D-C-'s relationship, but provide minimal substantive information regarding the marriage. Some of the affidavits contain discrepancies. For example, a March 2011 affidavit prepared by Mr. and Ms. [REDACTED] states that the petitioner and D-C- hosted a baby shower for the [REDACTED] in December 2010, and helped them move to a new apartment in March 2011. In a subsequent affidavit dated in February 2014, Mr. and Ms. [REDACTED] indicate that the baby shower was in September 2010, and the petitioner and D-C- helped them move in March 2010. Several of the affiants attest to doing activities with the petitioner and D-C- in June or "summer" 2012, such as Ms. [REDACTED] who states that she went to an amusement park in the summer of 2012, and the [REDACTED] who stated that they spent Father's Day 2012 with the petitioner and D-C-. However, the petitioner and D-C-'s divorce decree states that the couple separated in June 2012.

The petitioner submitted internet, energy, and mobile phone bills jointly addressed to the petitioner and D-C- at the [REDACTED] apartment in [REDACTED] Missouri. However, the evidence of record does not establish that D-C- ever resided at this residence. The petitioner submitted a letter from [REDACTED] Marketing Associate of [REDACTED] verifying the petitioner's residence from March 11, 2010 until September 30, 2012, but the letter does not mention D-C-. The lease contract agreement dated September 4, 2011 for the [REDACTED] obtained by USCIS officers during their February 2012 site visit, lists the petitioner as the sole occupant of the apartment.⁴ The petitioner's rental application, signed by the petitioner on March 8, 2010, states the petitioner's marital status as "separated." The leasing office's file also contained a handwritten note by the Community Manager, dated March 31, 2011, one day after the petitioner and D-C-'s immigration interview, indicating that the petitioner was "back together with [her] husband who has possible felony for assault." Although the petitioner presented documentation that she resided at the [REDACTED] from March 11, 2010 until September 30, 2012, she submitted a 24-month lease agreement, dated March 15, 2011, in the names of her and D-C-, for a residence on [REDACTED] in [REDACTED] Missouri. The petitioner also submitted a lease dated June 20, 2012 in the names of the petitioner and D-C- for a room in a house on [REDACTED] in [REDACTED] Illinois. The lease is signed by landlord [REDACTED] D-C-'s friend who also submitted an affidavit on the petitioner's behalf. The petitioner also submitted a rent receipt for this residence, dated June 20, 2012, in the

⁴ The full lease was also submitted by the petitioner to the immigration court (with service to DHS) in a filing made by her attorney on June 24, 2011.

amount of \$250, signed by [REDACTED]. The record contains no other evidence associating the petitioner with either the [REDACTED] or the [REDACTED] residence.

The petitioner provided numerous credit union statements listing D-C- as a joint owner. However, the account applications that she submitted show that D-C- is a Payable on Death Beneficiary. Thus, it does not appear that D-C- had regular access to the petitioner's accounts. The petitioner submitted correspondence from the Internal Revenue Service (IRS) jointly addressed to her and D-C-, a 2009 Tax Return Transcript showing that the petitioner and D-C- jointly filed taxes, documentation indicating that a vehicle was titled in both the petitioner's and D-C-'s names, and a printout indicating that D-C- was included on the petitioner's health insurance.

De novo review of the relevant evidence shows that there is substantial and probative evidence in the petitioner's file that she entered into marriage with D-C- to evade the immigration laws. The evidence includes D-C-'s signed statement indicating that the petitioner paid him to marry her, testimonial inconsistencies noted during the couple's immigration interview, and the petitioner's lease from the [REDACTED] complex indicating that she was the sole occupant of the residence (although she claimed that couple resided there together). To establish a bona fide marriage, the petitioner submitted a statement from D-C- in which he recanted his prior withdrawal. However, D-C- did not provide probative information about the marriage, nor did he provide any evidence to substantiate his claim that he was under the influence of medication when he signed the original withdrawal. On appeal, the petitioner asserts that D-C- signed the statement while heavily intoxicated, and under the influence of drugs. She further states that D-C- graduated high school and is fully capable of writing his own statement, refuting the USCIS officers' finding that D-C- was not fully literate and able to write his own withdrawal. However, no evidence is presented to substantiate the petitioner's statements. The other evidence submitted to establish the bona fides of the petitioner's marriage to D-C- included leases and a residence verification letter that conflict with each other, affidavits with minimal probative details and discrepancies, and account statements showing that the couple did not jointly use the account. The joint bills, insurance, 2009 tax return, and vehicle title provide some support to the petitioner's claim of a bona fide marriage to D-C-. However, when the evidence is viewed in the aggregate, it is not sufficient to overcome the substantial and probative evidence in the petitioner's file showing that she married D-C- to evade the immigration laws. Approval of the instant Form I-360 petition is therefore barred by section 204(c) of the Act.

Good-Faith Entry Into Marriage and Section 204(g) of the Act

Beyond the director's decision, the petitioner has failed to establish that she married M-M- in good faith 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.⁵ At the time the petitioner married M-M- she was

⁵ 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

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:

(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

(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).

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 (5th 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 record fails to establish by the preponderance of the evidence or by clear and convincing evidence that the petitioner entered into her marriage with M-M- in good faith. 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). With her initial Form I-360 submission, the petitioner provided a personal affidavit dated May 16, 2013 in which she briefly stated that she met M-M- in [REDACTED] in 2011 and that the couple commenced a long-distance relationship over the telephone. The petitioner indicated that the couple began living together in September 2012 and married in [REDACTED]. The petitioner did not substantively discuss her and M-M-’s courtship, wedding ceremony, shared residence and experiences, beyond the details of the abuse. The petitioner submitted an affidavit from [REDACTED] who attest that the petitioner and M-M- seemed happy and in love at the beginning of their marriage, but do not provide a probative description of occasions shared with the couple, besides an incident of abuse. The record contains a lease in both names, jointly filed taxes, a joint bank account statement, and joint automobile and health insurance; however, in the absence of a detailed personal statement from the petitioner or other probative testimony to establish the petitioner’s intent in marriage, the evidence of record does not demonstrate that the petitioner married M-M- in good faith 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. We hereby notify the petitioner of this additional reason why eligibility for the benefit sought has not been established.

Eligibility for Immigrant Classification

Also beyond the director’s decision, we hereby notify the petitioner that she is ineligible for immigrant classification because she has not complied with sections 204(c) and (g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

On appeal, the petitioner has not overcome all of the director's grounds for denial. Approval of the petition is barred by section 204(c) of the Act. In addition, the record does not establish that the petitioner married her second U.S. citizen husband in good faith, nor does it demonstrate that the requirements for the bona fide marriage exemption at section 245(e) of the Act have been met. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish her 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. The appeal will be dismissed, and the petition will remain denied.

ORDER: The appeal is dismissed.