U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-

DATE: NOV. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act), § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that approval of the Petition was barred by section 204(c) of the Act because the Petitioner entered into a prior marriage for the purpose of evading the immigration laws. The Petitioner filed a timely appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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].

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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Sierra Leone who claims to have entered the U.S. in 1996. She married J-N-,[1] a U.S. citizen on 2008. On October 13, 2008, J-N- filed a Form I-130, Petition for Alien Relative, on behalf of the Petitioner. The Form I-130 was denied by USCIS on September 22, 2009, due to abandonment. On March 6, 2014, the Petitioner filed the instant Form I-360 based on abuse during her marriage to her second spouse, L-K-,[2] who is also a U.S. citizen. Upon review of the record, including the Petitioner's response to a Notice of Intent to Deny (NOID), the Director determined that approval of the Form I-360 was barred by section 204(c) of the Act because the Petitioner entered into the marriage with J-N- for the purpose of evading the immigration laws. We review these proceedings *de novo*. The appeal will be dismissed for the following reasons.

III. SECTION 204(C) OF THE ACT AND THE PETITIONER'S MARRIAGE TO J-N-

Approval of the Petitioner's Form I-360 is barred by section 204(c) of the Act because the record contains substantial and probative evidence that the Petitioner married J-N- for the purpose of evading the immigration laws. 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

[1] Name withheld to protect the individual's identity.

[2] Name withheld to protect the individual's identity.

1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings. *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, a 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 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.

The Petitioner's statement submitted with the Form I-360 relates primarily to her marriage to L-K- and only very briefly discusses her marriage to J-N- and, to the extent that it does address her marriage to J-N-, only recounts that they met at their place of work, that he bought her lunch and gave her rides to and from work, and that she paid the utility bills and most of their rent. The remainder of her statement, as it relates to her marriage to J-N-, recounts incidents of alleged abuse. None of the documents proffered by the Petitioner in support of her Form I-360, other than a marriage certificate and a judgment of divorce, relate to her marriage to J-N-.

In response to the NOID, the Petitioner provided additional information regarding her marriage to J-N-. The Petitioner indicated that she and J-N- worked together starting in 2005 or 2006 and became friends when J-N- helped her through a difficult relationship with a friend of J-N's and that they "hooked up" and started dating in late-2007. The Petitioner stated that, during their courtship, she would make lunches for J-N- and that he would drive her to and from their place of work. The Petitioner recounted that J-N- was friendly to her daughter and bought her daughter gifts and took her to the playground. The Petitioner reported that their coworkers did not know that she and J-N- were dating because they "weren't really supposed to date each other at work." She also noted that, a few months after she and J-N- started dating and were intimate, she told him that she did not have valid immigration status and that J-N- told her that he would help her to get legal status by marrying her. The Petitioner noted that J-N- filed the Form I-130 shortly after they married and she received a work permit within six months of filing the Form I-130. According to the Petitioner, shortly after she obtained a work permit, her relationship with J-N- deteriorated when J-N- accused her of only marrying him to gain immigration status and he threatened to have the Petitioner deported.

The Petitioner also submitted two brief statements in response to the NOID. The statement from reported that he "met [J-N-] a couple times when him [sic] and [the Petitioner] started talking" and that [l]ater she told me that they were married and I was very happy for her and she was very happy to have had him in her life." does not, however, provide any details regarding the marriage of the Petitioner and J-N-. The Petitioner's stepsister, , reported that the Petitioner and J-N- met at work and that the Petitioner was very happy "when he [J-N-] said he was going to marry her and help her with her papers." Similar to does not provide any details regarding the marriage of the Petitioner and J-N-. In

addition, did not confirm certain facts contained in the Petitioner's statement in response to the NOID, such as that former boyfriend accompanied the Petitioner to the wedding ceremony for her marriage to J-N-. The response to the NOID does not contain any other evidence to show that the marriage to J-N- was not entered into for the primary purpose of evading the immigration laws.

As noted above, the Form I-130 was denied based on abandonment because neither J-N- nor the Petitioner appeared for two scheduled interviews at USCIS and, immediately prior to the second scheduled interview, J-N-'s attorney informed USCIS that J-N- no longer wished to pursue the petition. USCIS conducted an investigation into possible fraud associated with the Form I-130 filed by J-N- and, in the course of that investigation, interviewed J-N- on January 30, 2014. At that interview, J-N- signed a sworn statement indicating that his marriage to the Petitioner was entered into for the sole purpose of evading the immigration laws.

Upon an independent and *de novo* review of the relevant evidence, we find that the record contains substantial and probative evidence that the Petitioner married J-N- for the purpose of evading the immigration laws. The Petitioner's statement in response to the NOID regarding her marriage to J-N- lacks detail, is inconsistent with her statement accompanying the Form I-360, and verifies much of J-N-'s own statement to the USCIS investigators in which he confirmed that he and the Petitioner met at work and that he agreed to marry her to help her gain legal immigration status. The record contains no probative testimony from the Petitioner regarding her introduction to and subsequent interactions with J-N- prior to the marriage. The statements the Petitioner submitted from and do not describe in probative detail their personal observations of the couple prior to or after their marriage or the Petitioner's intent when entering into the marriage with J-N-.

IV. CONCLUSION

The record contains substantial and probative evidence that the Petitioner married J-N- for the purpose of evading the immigration laws and the Petitioner has not established that section 204(c) of the Act does not apply to her marriage with J-N-. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-*, ID# 14842 (AAO Nov. 18, 2015)