



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-P-E-

DATE: OCT. 13, 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 and affirmed her decision on two subsequent motions to reconsider. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Petitioner is subject to the section 204(c) of the Act bar to the approval of her petition because she entered into a prior marriage for the purpose of evading the immigration laws. On appeal, the Petitioner submits a brief.

I. 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.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act

The evidentiary standard and guidelines for a petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

- (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.

Section 204(c) of the Act states, in pertinent part, the following:

[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 [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides:

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.

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II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Nigeria who first entered the United States on June 17, 2002 as a nonimmigrant visitor.¹ The Petitioner married her first spouse, L-S-², a U.S. citizen, on [REDACTED] 2002, in [REDACTED] California, and they divorced in [REDACTED] California on [REDACTED] 2004. The Petitioner married her second spouse, I-I-T-W-³, on an unknown date and in an unknown place, and the marriage was dissolved in [REDACTED] California, on [REDACTED] 2005. On [REDACTED] 2005, the Petitioner married for a third time to J-W-⁴, a U.S. citizen, in [REDACTED] from whom she was divorced on [REDACTED] 2009, in [REDACTED] California.

On [REDACTED], 2009, the Petitioner married her fourth spouse, A-E-⁵, a U.S. citizen, in [REDACTED]. The Petitioner filed the instant Form I-360 based on her marriage to A-E- on [REDACTED], 2013. The Director subsequently issued a notice of intent to deny (NOID) the petition, informing the Petitioner that the record contained substantial and probative evidence that the Petitioner married J-W- for the purpose of evading immigration laws, and as such, section 204(c) of the Act barred approval of the petition. The Petitioner responded with additional and previously submitted evidence, which the Director found insufficient to establish her eligibility. The Director denied the petition, and affirmed her decision in response to the Petitioner's two motions to reconsider. The Petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record establishes that section 204(c) of the Act bars the approval of the Form I-360 petition. The appeal will be dismissed for the following reasons.

III. SECTION 204(c) OF THE ACT

The Director found that the Petitioner entered into marriage with J-W- in order to evade the immigration laws, and that section 204(c) of the Act barred approval of the petition. On appeal, the Petitioner does not overcome the Director's determination.

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 foreign national. *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).

¹ The Petitioner last entered the United States as a parolee on January 24, 2009.

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

⁴ Name withheld to protect the individual's identity.

⁵ Name withheld to protect the individual's identity.

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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 testimonial or other evidence regarding the couple's courtship, wedding ceremony, shared residence, and experiences together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

A. The Petitioner's Marriage to J-W-

The Petitioner married J-W-, her third spouse, on [REDACTED] 2005. On May 15, 2005, J-W- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf. On September 15, 2009, the Field Office Director, San Bernardino Field Office (Field Office Director), issued a NOID informing J-W- of the deficiencies in the evidence and requesting evidence of the *bona fides* of his marriage to the Petitioner. J-W- failed to respond, and on October 22, 2009, the Field Office Director denied the Form I-130, finding that the marriage was not *bona fide*.

In the current proceedings, the Director informed the Petitioner that a USCIS investigation determined that J-W- resided separately from the Petitioner during their marriage. The Director requested the Petitioner to submit evidence of a *bona fide* marriage. In response, the Petitioner submitted copies of: a 2005 joint tax return; a rental agreement; [REDACTED] bills; an application for life insurance; a retail store invoice; bank statements; two social security statements; a letter from the IRS; and photographs. The Petitioner also submitted a personal letter, and letters from her brother-in-law and three friends. The Director determined that the documentary evidence did not establish that the Petitioner and J-W- shared financial responsibilities or a common life together, and the affidavits did not contain sufficient probative detail to establish that the Petitioner entered into the marriage with J-W- in good faith. The Director concluded that the Petitioner entered the marriage for the purpose of evading immigration laws.

On appeal, the Petitioner asserts that the Director erred in finding substantial and probative evidence that she and J-W- entered into a fraudulent marriage. Upon independent review, we affirm the Director's determination that section 204(c) of the Act bars the approval of the petition.

The social security statements and a retail store invoice are addressed to J-W- at the residences the Petitioner claimed they shared, however the remaining documentary evidence is of limited probative value in establishing that the Petitioner married J-W- in good faith. The 2005 joint tax return prepared on March 10, 2006, for the Petitioner and J-W- is marked as a reference copy and there is no evidence that it was filed. Further, the [REDACTED] residence listed on the return is inconsistent with the Forms G-325A, Biographic Information, of the Petitioner dated in April 2005 and December 2013, in which the Petitioner indicates that she left the [REDACTED] residence for a residence on [REDACTED] in 2005. The [REDACTED] bills are in the Petitioner's name only. The life insurance policy application is signed by the Petitioner with J-W- as the beneficiary, but there is no evidence that the policy was ever in effect. The [REDACTED] statements show that the Petitioner and J-W- had a joint account, but they reflect few transactions. The IRS notice of past due

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taxes issued to J-W- is dated seven months after the Petitioner and J-W- divorced. Photographs of the couple are undated and taken at unspecified locations.

The statements from the Petitioner, and her friends and family also do not demonstrate her good faith entry into the marriage. [REDACTED] explained that he is married to the Petitioner's sister. He stated that he and his wife held a wedding reception for the Petitioner and J-W- and the former couple rented a room from them. He did not, however, provide probative details of the wedding reception, his residence with the former couple, or any other descriptions of their relationship to establish a good-faith marriage. The letters from the Petitioner's friends, [REDACTED], [REDACTED] and [REDACTED], also do not provide probative details of the Petitioner's good-faith intentions in marrying J-W-. Although the Petitioner's friends generally recount that they visited the Petitioner and J-W- at their marital residence, their statements do not describe any particular visit or social occasion with the couple in detail, or otherwise discuss interactions between the couple that would demonstrate good-faith intent.

The Petitioner explained in her letter in response to the NOID that she met J-W- in August 2004 at work and dated him for about six months before he proposed in February 2005. Although she described him as loving and generous, and stated that problems began to develop after two years of marriage, the Petitioner's letter is inconsistent with other evidence in the record. The Petitioner stated that after she married J-W- in [REDACTED] 2005, they moved to an address on [REDACTED] in [REDACTED] California, where they lived alone; and a year later, she and J-W- moved to an address on [REDACTED] California, where they also lived alone. The Petitioner's statement that she lived alone with J-W- conflicts with other evidence showing that the Petitioner and J-W- rented a room from and lived in the homes of the Petitioner's sister and brother-in-law, [REDACTED] first at the [REDACTED] address and then at the [REDACTED] address.⁶ In his statement, [REDACTED] indicated that J-W- and the Petitioner rented a room from him and his wife from 2005 to 2009. The monthly rental agreement submitted into the record, signed by [REDACTED], Lessor, and the Petitioner and J-W-, Lessees, on March 10, 2005, is for a room at the [REDACTED] address. The Petitioner also stated that in January 2009 when she returned from Nigeria, J-W- had left their residence with all their valuables, leaving only her clothes. However, [REDACTED] does not mention any theft of the Petitioner's property at the end of J-W-'s tenancy. He instead indicated that the Petitioner and J-W- were good tenants who paid their rent on time. The significant discrepancies in the Petitioner's evidence regarding her shared residence and marital experiences undermine her claim of having a *bona fide* marriage with J-W-.

Accordingly, our independent and *de novo* review of the record establishes that there is substantial and probative evidence, documented in the record, demonstrating that the petitioner entered into her prior marriage with J-W- for the sole purpose of evading U.S. immigration laws. *See Tawfik*, 20

⁶ In his statement, [REDACTED] recounted that J-W- and the Petitioner rented a room from him and his wife from 2005 to 2009. The Petitioner's Forms G-325A indicate that she moved from the [REDACTED] address to the [REDACTED] address in either 2005 (G-325A dated December 2013) or August 2006 (G-325A dated September, 2010). While [REDACTED] does not indicate when he moved to [REDACTED], he stated that he and his wife own and reside at the [REDACTED] address.

I&N Dec. at 167. Consequently, section 204(c) of the Act applies to bar approval of the instant self-petition.

IV. INELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

Beyond the decision of the Director, section 204(a)(1)(A)(iii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility for immediate relative classification based on his or her relationship to the U.S. citizen abuser.⁷ The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explains, in part, that such eligibility requires the Petitioner to comply with the provisions of section 204(c) of the Act, which as discussed above, she has not done. The Petitioner is consequently ineligible for immediate relative classification based upon her marriage to A-E- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this additional reason.

V. CONCLUSION

On appeal, the Petitioner has not overcome the Director's determination that she is subject to the section 204(c) of the Act bar to the approval of her petition because she entered into a prior marriage for the purpose of evading the immigration laws. Beyond the decision of the Director, she has also not demonstrated that she is eligible for immediate relative classification based on her marriage. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-P-E-*, ID# 13901 (AAO Oct. 13, 2015)

⁷ 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 (9th Cir. 2003).