



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

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

MATTER OF L-G-G-A-

DATE: OCT. 15, 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.

I. APPLICABLE LAW

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 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)(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.

The eligibility requirements for abused spouses are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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:

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.

* * *

(b)(6)

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(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Brazil who entered the United States on October 7, 2002, as a nonimmigrant visitor. On June 19, 2007, D-A-¹ a U.S. citizen, filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf, which was denied on March 23, 2010. The Petitioner and D-A- were divorced on [REDACTED] 2009, and on [REDACTED] 2009, D-A- plead guilty to Conspiracy to Commit Fraud in Connection with Immigration Documents in the U.S. District Court for the [REDACTED] of Texas, based partially on her marriage to the Petitioner.

On [REDACTED] 2009, the Petitioner married M-N-² a U.S. citizen, in Tennessee. On May 27, 2010, M-N- filed a Form I-130 on the Petitioner's behalf. In a notice of intent to deny (NOID) the Form I-130, the District Director, [REDACTED] found that the Petitioner's marriage to D-A- was entered into for the purpose of evading the immigration laws. The District Director denied the Form I-130 on December 12, 2011, pursuant to section 204(c) of the Act. On May 10, 2013, M-N- filed a second Form I-130 on the Petitioner's behalf, which was withdrawn on February 20, 2014. On January 27, 2012, the Petitioner was placed into removal proceedings with the issuance of a Notice to Appear (NTA).³ The Petitioner then filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 28, 2014. The Director denied the petition finding the record insufficient to establish the requisite battery or extreme cruelty.

On appeal, the Petitioner reasserts that he has established his eligibility, and that he was financially abused and threatened.

We review these proceedings *de novo*. On appeal, the Petitioner has not established that he was subjected to battery or extreme cruelty by M-N- during their marriage. The Petitioner's claims and the evidence submitted on appeal do not overcome the Director's grounds for denial. A full review of the record does not demonstrate the Petitioner's eligibility for the following reasons.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

³ The petitioner remains in removal proceedings and his next master calendar hearing is scheduled for [REDACTED] 2019, in the [REDACTED] Minnesota, Immigration Court.

III. ANALYSIS

A. Battery or Extreme Cruelty

The Director did not err in determining that the record was insufficient to establish that M-N- subjected the Petitioner to battery or extreme cruelty. In his affidavits, the Petitioner indicated that M-N- used her status as an employee of the Department of Homeland Security to “pressure” him, and threatened to deport him. He stated that M-N- obtained two restraining orders against him, and that she cashed all of the money in his account. The Petitioner asserted that M-N- “abused [him] financially,” that she was a “shopaholic” who was “wasteful” with their money, and that she bought unnecessary items for herself. The Petitioner also indicated generally that M-N- insulted him and yelled profanities. The petitioner did not probatively describe any behavior that involved threatened violence, exploitation, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the Petitioner does not submit any new evidence, and contends that although M-N- was not physically abusive, she extorted money from him and threatened to have him removed from the United States. Although the Petitioner is correct that abuse need not be physical to rise to the level of extreme cruelty, the relevant evidence does not show that M-N-’s behavior involved psychological or sexual abuse, threatened violence, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner did not describe any behavior or establish that any acts perpetrated against him by M-N- were part of an overall pattern of violence. *Id.* Accordingly, the Petitioner has not established by a preponderance of the evidence that M-N- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Section 204(c) of the Act

Beyond the decision of the Director,⁴ the record contains evidence that the Petitioner married his ex-wife, D-A-, in order to evade immigration laws, and USCIS made a previous finding that section 204(c) of the Act barred the approval of any visa petitions. 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 petitioner. *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).

⁴ 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).

Where there is reason to doubt the validity of a marital relationship, the 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 evidence in the record shows that D-A- filed a Form I-130 on behalf of the Petitioner with which she did not provide evidence of joint ownership of property, evidence of joint tenancy, evidence of commingling of financial resources, or affidavits from third parties attesting to the validity of the marriage between D-A- and the Petitioner. In short, there was no documentation submitted to demonstrate a bona fide marriage between D-A- and the Petitioner. While this, alone, would be insufficient to establish that the Petitioner and D-A- entered into marriage in order to circumvent immigration laws, D-A- was convicted of Conspiracy to Commit Fraud in Connection with Immigration Documents based on multiple fraudulent marriages, one of which was with the Petitioner. Furthermore, the Petitioner did not live with D-A-, filed his taxes as single while he was married to her, and during an immigration interview on October 21, 2011, the Petitioner indicated that he used to pay D-A- "\$200 or \$300 every once in a while." The lack of evidence supporting the bona fides of the marriage between D-A- and the Petitioner and the conviction against D-A- based, in part, on her fraudulent marriage to the Petitioner, constitutes "substantial and probative evidence" of prior marriage fraud, and thus the burden shifts to the Petitioner to overcome this negative determination.

The Petitioner has not provided sufficient documentation of his good-faith entry into marriage with D-A- that would rebut USCIS's section 204(c) finding. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

IV. CONCLUSION

The Petitioner has not established that M-N- subjected him to battery or extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Beyond the decision of the Director, approval of the instant petition is further barred pursuant to section 204(c) of the Act. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of L-G-G-A-*, ID# 13768 (AAO Oct. 15, 2015)