



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

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

MATTER OF S-O-A-

DATE: OCT. 21, 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. 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:

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[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 record reflects that the Petitioner married J-C,¹ a U.S citizen, on [REDACTED] 2003, in [REDACTED] Virginia. On March 16, 2004, J-C- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf. The Form I-130 was approved, and the Petitioner received conditional permanent resident status through an approved Form I-485, Application to Register Permanent Residence or Adjust Status. The Petitioner and J-C- filed a joint Form I-751, Petition to Remove Conditions on Residence, on June 6, 2005. During an interview relating to the Form I-751, J-C- stated that she did not know the individuals who wrote affidavits in support of the Form I-751, that she and the Petitioner did not reside together, and that the Petitioner had paid her \$3000 initially and \$260 per month for five years to marry him so that he could obtain immigration benefits. J-C- withdrew her Form I-130 at the interview. The Form I-751 was denied for fraud and the Petitioner was placed in removal proceedings on August 1, 2008. The removal proceedings were terminated without prejudice on August 1, 2008.

J-C- filed a second Form I-130 on the Petitioner's behalf on November 18, 2009. During an interview on August 3, 2011, relating to this Form I-130, J-C- stated that she did not reside with the Petitioner but instead resided with [REDACTED] the father of her child. [REDACTED] was interviewed on September 23, 2011, and he stated that he and J-C- had resided together for over four years and that he was the father of J-C-'s child. On September 26, 2011, the Washington Field Office of U.S. Citizenship and Immigration Services (USCIS) issued a notice of intent to deny (NOID) the Form I-130 based on evidence that the marriage between the Petitioner and J-C- was

¹ Name withheld to protect the individual's identity.

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fraudulent. The Petitioner and J-C- responded to the NOID with a statement from counsel, which USCIS found insufficient to establish that the marriage was *bona fide*. USCIS denied the Form I-130 on October 26, 2011, based on a finding that the marriage between the Petitioner and J-C- was fraudulent. J-C- appealed to the Board of Immigration Appeals (Board). In a decision dated November 13, 2012, the Board dismissed the appeal, finding that the preponderance of the evidence did not establish that the marriage between the Petitioner and J-C- was *bona fide*. The Petitioner divorced J-C- on [REDACTED] 2013.

The Petitioner married M-B-,² a U.S citizen, on [REDACTED] 2013 in [REDACTED], Maryland. M-B- filed a Form I-130 on the Petitioner's behalf on April 29, 2013, and the Petitioner filed a Form I-485 on the same date. The record does not indicate that the Form I-130 and Form I-485 were adjudicated.

The Petitioner filed the Form I-360 on January 22, 2014, based on alleged abuse by M-B- during their marriage. The Director issued a NOID based on evidence that approval of the Form I-360 was barred by section 204(c) of the Act because the Petitioner had previously entered into marriage with J-C- for purposes of evading the immigration laws. The Petitioner responded to the NOID with additional evidence, most of which related to the Petitioner's marriage to M-B-. The Director found the evidence insufficient to establish that the Petitioner's marriage to J-C- was *bona fide*, and denied the petition accordingly.

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

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-C- 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 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).

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.

On appeal, the Petitioner does not address the validity of his marriage to J-C- or argue that approval of his petition is not barred by section 204(c) of the Act. Instead, the Petitioner alleges that the

² Name withheld to protect the individual's identity.

Director erred in focusing on the Petitioner's previous marriage to J-C- rather than his marriage to M-B-, on which his Form I-360 is based.

The Petitioner misinterprets the law. Although the Petitioner's Form I-360 is based on his marriage to M-B-, the petition cannot be approved because the Petitioner previously married J-C- for purposes of evading the immigration laws. Section 204(c) of the Act. The record contains substantial and probative evidence that the Petitioner did not marry J-C- in good faith. The Petitioner does not assert on appeal that his marriage to J-C- was *bona fide*.

In the NOID, the Director noted that the first Form I-130 that J-C- filed for the Petitioner was approved, but that a subsequent Form I-751 was denied based on a finding of fraud. The Director also noted that the second Form I-130 that J-C- filed on the Petitioner's behalf was denied based on a finding that the marriage was fraudulent. The Director further recalled that the Board dismissed the appeal of the denied second Form I-130 because the evidence did not establish that the marriage between the Petitioner and J-C- was *bona fide*. The Director provided the Petitioner an opportunity to submit evidence to establish that he married J-C- in good faith. In the denial letter, the Director discussed the fact that the Petitioner's response to the NOID provided only limited information regarding his marriage to J-C- and instead focused on his marriage to M-B-.

The record contains substantial and probative evidence that the Petitioner married J-C- for purposes of evading the immigration laws. The Petitioner did not provide evidence to establish his good-faith marriage in response to the NOID. He also does not assert on appeal that the Director erred in finding that his marriage to J-C- was fraudulent. Instead, he contends that his marriage to J-C- is irrelevant to his Form I-360 petition. The Petitioner errs in this assertion, as approval of his Form I-360 is barred by section 204(c) of the Act as a result of his previous fraudulent marriage to J-C-.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. 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. Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of S-O-A-*, ID# 14751 (AAO Oct. 21, 2015)