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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [Redacted]  
EAC 00 244 52120

Office: Vermont Service Center

Date: 15 FEB 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:  
[Redacted]

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Nigeria who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel states that the petitioner respectfully disagrees with the analysis in the denial of the self-petition as there is some level of contradiction in the decision. He asserts that the petitioner has established that he lived with his wife and that he has good moral character; therefore, the combination of the Service's finding of good moral character makes it a contradiction to state that the petitioner did not enter the marriage in good faith. Counsel further asserts that the petitioner has demonstrated that he is a truthful man who really did live with his wife, and his wife took advantage of him and made his life miserable. He states that if the petitioner is denied the opportunity to adjust because of his wife's behavior, then the Violence Against Women Act and the subsequent Victims of Trafficking and Violence Prevention Act of 2000 have not served their purpose.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

- (C) Is residing in the United States;
- (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States with an I visa (representative of foreign information media) on July 16, 1996. The petitioner married his United States citizen spouse on August 27, 1997 at Orange, New Jersey. On July 10, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) 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.

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(iv) 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 abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed the evidence furnished by the petitioner to establish that he was the subject of extreme cruelty. That discussion will not be repeated here. He noted, however, that the psychiatric evaluation and affidavits furnished state that the petitioner's spouse regularly insulted him and antagonized him in front of friends, and she abandoned him to pursue her military career; however, no specific details were given regarding the insults and behavior of his spouse. The director further noted that although the petitioner claimed his spouse intentionally "botched" certain questions at their immigration interview to prevent him from getting a green card, a review of the summary of the interview, contained in the record of proceeding, reveals that

the petitioner and his spouse gave many conflicting answers but did not appear from the answers given that his spouse deliberately sabotaged the interview.

On appeal, counsel asserts that "it takes a devious mind to mistreat their own husband, botch his immigration interview and then to abandon him for the military and still try to lead him on with romantic letters after making his life difficult. Quite simply, she was trying to use the Appellant. What has happened to the Appellant is the epitome of extreme cruelty."

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." Counsel, however, failed to offer specific details regarding the mistreatment of the petitioner by his spouse, nor did he submit evidence to establish that such mistreatment was "extreme." Furthermore, "abandonment" is not included in, nor does it meet, the definition of qualifying abuse.

The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

The director reviewed and discussed the evidence furnished by the petitioner, including the evidence contained in the record of proceeding, and determined that the record did not contain satisfactory evidence to establish the existence of a good-faith marriage.

On appeal, counsel asserts that the petitioner has established that he lived with his wife and that he has good moral character; therefore, the combination of the Service's finding of good moral character makes it a contradiction to state that the petitioner did not enter the marriage in good faith. He further asserts that what has happened to the petitioner is the epitome of extreme cruelty and the petitioner was smart not to establish an excessive amount of joint documents with his wife; doing so would not make sense in light of her irresponsible behavior during the marriage.

The record, however, reflects that the petitioner has furnished a letter of clearance from the Newark Police Department reflecting that the petitioner has no criminal record in their files. Based on this information, the director did not find the petitioner to lack good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F). Therefore, counsel's argument that the combination of the Service's finding of good moral character makes it a contradiction to state that the petitioner did not enter the marriage in good faith

pursuant to 8 C.F.R. 204.2(c)(1)(i)(H) is without merit.

Counsel, on appeal, failed to submit additional evidence to establish the existence of a good-faith marriage. Furthermore, while the evidence in the record established that the petitioner and his spouse had resided together pursuant to 8 C.F.R. 204.2(c)(1)(i)(D), the petitioner, however, has failed to establish that he entered into the marriage to the U.S. citizen in good faith and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.