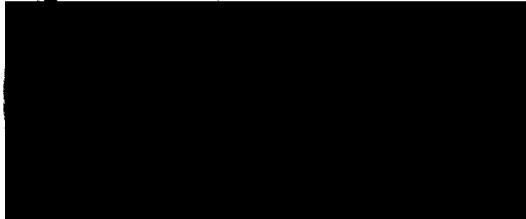




U.S. Citizenship  
and Immigration  
Services

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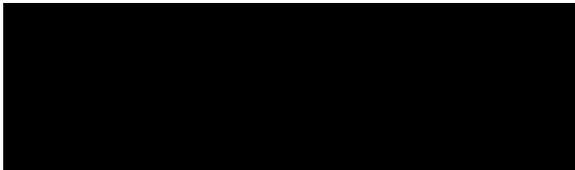
Office: VERMONT SERVICE CENTER

Date: NOV 21 2005

IN RE: Petitioner: [REDACTED]

PETITION: 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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Nigeria who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The petitioner in this case initially submitted copies of her marriage license and certificate, a Domestic Violence Preliminary Complaint Record concerning an aggravated assault against the petitioner by her husband, a personal protection order for the petitioner against her husband, the identification page of the petitioner's passport, her United States visa and I-94 card, and her husband's Michigan state identification card and social security card. The director found this evidence insufficient to establish the petitioner's eligibility and issued a Request for Evidence (RFE) on November 4, 2004 asking the petitioner to submit evidence of her husband's U.S. citizenship, proof of the legal termination of her prior marriage, evidence of her good moral character, and evidence that she married her husband in good faith and resided with him. The RFE listed the specific types of documents that the petitioner could submit to establish her eligibility.

On December 13, 2004, the petitioner timely responded to the RFE with additional evidence. The director found that evidence, combined with the previously submitted evidence, sufficient to establish the petitioner's eligibility under all the statutory criteria except for entry into the marriage in good faith. To show that she had entered into her marriage with her U.S. citizen husband in good faith, the petitioner submitted copies of her and her husband's Michigan state identification cards, a U.S. Postal Service change of address form showing the petitioner's change of address from her marital residence, photographs of the petitioner and her husband at their wedding ceremony and in their marital residence, and a statement by an individual who knew the petitioner and her husband. On appeal, counsel submits a brief and two additional testimonial letters. Counsel's contentions and the evidence submitted on appeal do not overcome the deficiency of the petition and the appeal will be dismissed.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The regulation at 8 C.F.R. § 204.2(c)(2) further 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.

....

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other'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. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible evidence will be considered.

The record contains the following evidence relating to the petitioner's marriage to her abusive, U.S. citizen husband: a copy of her marriage license and certificate, copies of her and her husband's Michigan state identification cards showing different residential addresses, a U.S. Postal Service change of address form for the petitioner, a joint bank account application form for the petitioner and her husband, photographs of the petitioner and her husband at their wedding ceremony and in their marital residence, the petitioner's own statement and three letters from two individuals who knew the petitioner and her husband.

The submitted documents indicate that the petitioner and her husband briefly resided together, but do not establish that the petitioner entered into the marriage in good faith. The submitted bank account application is undated and does not establish that the petitioner and her husband actually obtained a joint bank account or otherwise commingled their assets. Three photographs show the petitioner and her husband during their wedding ceremony at the Coleman Young Municipal Building in Detroit on March 28, 2003. Another four photographs show the petitioner and her husband embracing at their home and are dated February 2 and April 4, 2003. The photographs attest to the petitioner's marriage to Mr. [REDACTED] and their joint residence, but do not establish that the petitioner entered her marriage in good faith.

In his letter submitted on appeal, [REDACTED] an elder of the petitioner's church, explains that he has known the petitioner for three years. Mr. [REDACTED] further states, "I also know her husband, Mr. [REDACTED]. I attest to the fact that Eunice entered into a bonafide marriage with [REDACTED]. I used to go to their house when they lived together at 1926 Lasher road in Detroit. It was there that I used to pick them up using the church van to take them to church every Sunday." Mr. [REDACTED] does not state the specific dates or on how many occasions he picked up the petitioner and her husband. Nor does he explain the basis for his knowledge that the petitioner had a bonafide marriage to Mr. [REDACTED]. For example, Mr. [REDACTED] does not state that he actually visited the petitioner and her husband inside their marital home or that he directly observed their interactions as husband and wife, apart from the occasions on which he drove them to church.

In a letter submitted on appeal, Reverend [REDACTED] Founder and Senior Pastor of The Church of the Living God, states that the petitioner became a member of his church in Maryland in 2001 and then relocated to Detroit in 2003 where she attended a local branch of the church. Rev. [REDACTED] explains that during a revival meeting he conducted at the Detroit branch church in 2003, the petitioner and her husband asked him to perform

a marriage blessing for them. Rev. ██████ explained that the church required eight hours of counseling for the couple before such a blessing could be performed. Rev. ██████ states that the petitioner and her husband never contacted him to arrange the required counseling before his departure from Detroit. Rev. ██████ concludes that “[t]o the best of my knowledge and belief, ██████ was in a bonafide marriage with Mr. ██████, even though it appears to have been a marital relationship full of misunderstandings.” Yet Rev. ██████ states that he met Mr. ██████ on only one occasion and never conducted counseling for the couple. Hence, his attestation to the bonafides of the petitioner’s marriage is of little weight.

The petitioner herself states:

I [,] ██████ [,] married my husband ██████ with good faith and love and he too but devil used him to abuse me and I flea [sic] from the house where we live with the Aunty at ██████ Road. And fear will not me [sic] to go back even to get my documents from the house. In fact it was a good faith marriage.

The petitioner does not describe or provide any details regarding how she met her husband, their courtship, their decision to marry, their marriage ceremony, shared experiences or any further information about their life together as husband and wife.

We are mindful of the evidence that shows that the petitioner only briefly resided with her husband before he became abusive and she fled for her safety. The record indicates that the petitioner was married to ██████ a U.S. citizen, on March 28, 2003. On April 19, 2003, the submitted domestic violence preliminary complaint record states that Mr. ██████ assaulted and injured the petitioner and that she was taken to a hospital. On May 14, 2003, the Wayne County Michigan Circuit Court issued an Ex Parte Personal Protection Order for the petitioner against her husband. A letter from ██████ a counselor and advocate at the Haven domestic violence shelter, verifies that the petitioner fled her marital home for her own safety and began residing at the Haven shelter on July 18, 2003. In his letter dated November 18, 2004, ██████ affirms that he “went and brought some of ██████ belongings out from their house after the incident, because she could not enter the house to get her belongings for fear of her life and safety.”

We understand that the petitioner thus faced obstacles in obtaining supporting documentation of her marriage and we have considered all the relevant evidence submitted. This evidence does not establish that the petitioner entered into her marriage with Mr. ██████ in good faith. Mr. ██████ states that he obtained some of the petitioner’s belongings from her marital residence. On appeal, counsel states that the petitioner had mail addressed to both her and her husband at their marital residence, but neither the petitioner nor counsel explain why Mr. ██████ was unable to retrieve this mail or obtain further evidence of the petitioner’s good faith marriage when he went to the petitioner’s marital residence to retrieve her belongings. On appeal, counsel opines that “there would not have been much proof of a commingling of resources” given the short time that the petitioner and her husband resided together, but neither counsel nor the petitioner state that such evidence does not exist or explain why the evidence was unobtainable. Moreover, the petitioner’s statement does not describe in any detail how she met her husband, their courtship, their decision to marry, their shared experiences or any other pertinent information about their life as a married couple. The record contains no statement from the person who took the photographs of the petitioner and her husband at their marriage ceremony and marital residence and the petitioner submitted no affidavits from any other individuals with significant personal knowledge of her acquaintance with Mr. ██████ and their courtship, wedding, or married life. The evidence submitted thus fails to establish that the petitioner entered into her marriage with Mr. ██████ in good faith as

required by section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(vii). The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her petition must be denied.

The burden of proof in visa petition 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. This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) of the Act with the requisite supporting evidence and the required fee or a documented request for a fee waiver.

**ORDER:** The appeal is dismissed.