

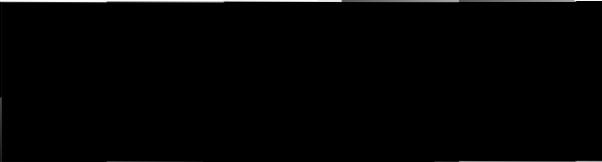


U.S. Citizenship  
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FILE: [REDACTED]  
EAC 04 087 50419

Office: VERMONT SERVICE CENTER

Date: **MAY 23 2006**

IN RE: Petitioner:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Nigeria who last entered the United States on April 14, 1998 as a B-2 nonimmigrant visitor. Her first marriage to [REDACTED] ended in divorce on August 27, 1998 in Texas. The petitioner wed U.S. citizen [REDACTED] on October 16, 1998 in Texas.

On February 2, 2004, the petitioner filed a Form I-360 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

On May 13, 2005, the director denied the petition, finding that the petitioner had failed to establish that she or her children had been subjected to battery or extreme cruelty by her spouse.

On appeal, counsel for the petitioner states that the petitioner filed her Form I-360 petition without assistance and that the petitioner did not understand what evidence she needed to submit to show her eligibility. Counsel indicated that she would submit a brief and/or evidence within 30 days of filing the notice of appeal. Nine months have lapsed and nothing more has been submitted for the record. This office sent a facsimile to counsel for the petitioner to inquire as to whether she had submitted a brief and/or additional evidence. Counsel responded that she did not file a brief or evidence in support of the appeal. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her

affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

In this case, the record shows that the petitioner married [REDACTED] a U.S. citizen, on October 16, 1998 in Texas. The petitioner's U.S. citizen spouse filed a Form I-130 petition on her behalf on November 13, 1998. The petitioner filed a Form I-485 concurrently on the same date. Both the petition and application were denied on May 8, 2002 due to abandonment. The petitioner was placed in removal proceedings on March 12, 2003.<sup>1</sup> The petitioner now 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. The petitioner filed her Form I-360 on February 2, 2004. On November 9, 2004, the director issued a notice informing the petitioner that the evidence submitted with her Form I-360 was insufficient to establish her eligibility and requested documentation of the legal termination of the petitioner's prior marriage; evidence that the petitioner or her children had been subjected to battery or extreme cruelty by her spouse; and evidence she entered into the marriage in good faith. On December 6, 2004, the petitioner responded to the director's request.

The first issue to be addressed in this proceeding is whether the petitioner established that she or her children had been subjected to battery or extreme cruelty by her spouse.

The petitioner submitted two items of evidence in support of her assertion that she had been abused by her U.S. citizen spouse: her statement and a letter written by a counselor at the Houston Area Women's Center. The petitioner wrote:

I claim social isolation as to the type of mental abuse I suffered. In the last Quarter of 2000, [REDACTED] did not want to [sic] anything to do with me. If I happened to walk into a room while he is taking a phone call, he will no longer speak but will continue the conversation with "Hmm[?]" and then tell the person at the other end of the line that he will call him/her back. Sometimes the phone will ring and no one will speak at the other end of the line when I pick it up. It continued till [sic] when he asked for a divorce and I asked him to give us a chance to talk it through. He would not go anywhere with me and started keeping late nights then gradually started staying away from home months on end. He finally moved out in mid January 2001. He promised to keep calling which he did about once a week and we always had one topic to discuss - Divorce. I will usually cry and beg then he will hang up.

The petitioner also submitted a letter dated July 8, 2005 from [REDACTED] of the Houston Area Women's Center. Ms. [REDACTED] indicated that the petitioner became a client of the Houston Area Women's Center in June of 2005, more than four years after the petitioner's spouse moved out of their home. Ms. [REDACTED] said that the petitioner received individual and support group counseling and

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<sup>1</sup> The petitioner's next scheduled Immigration Court hearing is on August 30, 2006.

relayed that she had suffered emotional abuse that included lies and broken promises. Ms. [REDACTED] states that the petitioner told her that her husband refused to be affectionate towards her to punish her and acted as if her thoughts and feelings were unimportant. She further indicated that her husband cheated on her and wanted nothing to do with her. Finally, the petitioner said that she experienced spiritual abuse because her husband left her because she spoke of God too often.

The conduct described does not amount to psychological abuse and the record does not indicate that the conduct was a part of an overall pattern of abuse against the petitioner.

The petitioner's statement and the letter written by Ms. [REDACTED] does not establish that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi) and 204.2(c)(2)(iv). The evidence does not indicate that Mr. [REDACTED] ever used or threatened to use force against the petitioner. According to the evidence in the record, Mr. [REDACTED] behavior was not part of an overall pattern of violence and did not amount to psychological abuse. Accordingly, the present record does not demonstrate that the petitioner was subjected to battery or extreme cruelty by her U.S. citizen spouse as required by section 204(a)(1)(A)(iii) of the Act. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his case.

On remand, the director should also consider whether the petitioner established that she entered into the marriage in good faith. There is no evidence in the record to show that the petitioner and her spouse shared financial responsibilities and resources. She provided no evidence regarding her courtship and marriage celebration. The director should also consider whether the petitioner established that she is a person of good moral character. It is noted that the petitioner obtained a police clearance that was researched by name only, but failed to supply the law enforcement agency with all aliases she has used.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for

further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.