

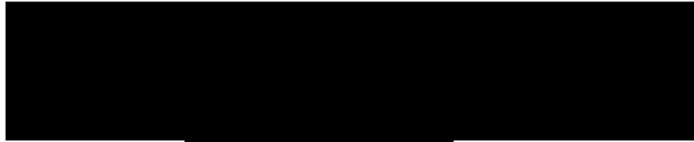


U.S. Citizenship
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FILE: [Redacted]
EAC 05 004 52453

Office: VERMONT SERVICE CENTER

Date: FEB 12 2007

IN RE: Petitioner: [Redacted]

PETITION: Petition for 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 appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that she entered into marriage with her husband in good faith.

On appeal, counsel submits a letter and additional evidence.

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 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 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].

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *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 evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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.

* * *

(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 . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 relevant evidence will be considered.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Nigeria a who states in these proceedings that she entered the United States on October 21, 1999. On February 27, 2001, the petitioner married I-O-¹, who was a lawful permanent resident of the United States at that time. On June 14, 2002, the petitioner's husband was naturalized. On October 31, 2003, the Baltimore District Director denied the Form I-130, petition for alien relative, filed by the petitioner's husband on her behalf, due to abandonment. On March 25, 2004, the petitioner was served with a Notice to Appear for removal proceedings charging her as removable pursuant to section 212(a)(6)(A)(i) of the Act as an alien present in the United States without having been admitted or paroled. On September 28, 2005, the immigration judge administratively closed the proceedings pending adjudication of this Form I-360 petition.

The petitioner filed her Form I-360 on October 4, 2004. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good faith marriage to and residence with her husband. The petitioner, through counsel, timely responded with further documentation. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good faith marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on July 19, 2006 and counsel timely appealed.

¹ Name withheld to protect individual's identity.

On appeal, counsel claims that the evidence submitted below established the requisite joint residence and good faith marriage, but was misevaluated by the director. We concur with the director's determination that the petitioner failed to establish her good-faith entry into her marriage. Beyond the director's decision, the record also fails to demonstrate that the petitioner resided with her husband.

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to her alleged good-faith entry into marriage with her husband:

- The petitioner's affidavits dated September 20, 2004; May 31, 2005; and May 4, 2006, which were submitted below and her August 16, 2006 affidavit submitted on appeal;
- A psychological evaluation of the petitioner prepared by [REDACTED] and dated June 12, 2004;
- Affidavits dated July 21, 2004 and May 25, 2005 of the petitioner's friend, [REDACTED];
- Affidavit dated July 21, 2004 of the petitioner's friend, [REDACTED];
- Affidavit dated July 23, 2004 of the petitioner's friend, [REDACTED];
- Affidavits and a letter dated July 23, 2004; May 25, 2005; May 2 and May 4, 2006 of the petitioner's pastor, [REDACTED], that were submitted below and his October 2, 2006 affidavit submitted on appeal;
- Affidavit dated May 26, 2005 of the petitioner's friend, [REDACTED];
- Affidavit dated May 25, 2005 of the petitioner's friend, [REDACTED];
- Affidavit dated September 18, 2006 of the petitioner's friend, [REDACTED];
- Copies of forms and documents related to the Form I-130 petition filed by the petitioner's husband on her behalf and the petitioner's corresponding Form I-485, application to adjust status; and
- Copies of photographs of the petitioner and her husband at their wedding and on three other occasions.

In her September 20, 2004 affidavit, the petitioner states that her husband and his brother went to school together in Nigeria and that she met them again in the United States shortly after her arrival. The petitioner reports that she dated her husband for two years before their marriage and that she moved in with him in February 2000. In her May 31, 2005 affidavit, the petitioner states that despite the abuse, she was hopeful that she and her husband could reconcile and save their marriage.

However, although she submitted four affidavits, the petitioner provided no probative details of how she met her husband in the United States, their courtship, wedding, honeymoon (if any), marital life and any of their shared experiences, apart from her husband's abuse.

[REDACTED]'s evaluation and the affidavits of the petitioner's friends and pastor also fail to fully support her claim. In her June 12, 2004 evaluation, [REDACTED] confirms that the petitioner said that she knew

of her husband in Nigeria, that they became good friends in this country and eventually married. [REDACTED] does not discuss any further information regarding the petitioner's courtship, wedding and marital relationship, apart from the abuse, that was conveyed to her by the petitioner.

In her July 21, 2004 affidavit, [REDACTED] simply states that she knew the petitioner loved her husband and that the former couple dated for a year and a half before they were married. In her May 25, 2005 affidavit, [REDACTED] states that she knows that the petitioner married her husband in good faith because [REDACTED] and her husband attended the former couple's wedding and "they were a very happy couples [sic] together, who were so much in love[.]" Yet [REDACTED] provides no probative details regarding the petitioner's purported good-faith in entering the marriage and [REDACTED] does not otherwise discuss the basis of her knowledge of the allegedly good-faith marriage. In addition, [REDACTED] states that the petitioner and her husband dated for a year and a half prior to their marriage although the petitioner herself states that the former couple dated for two years. [REDACTED] husband, [REDACTED], similarly fails to provide any relevant details, but simply states that he attended the petitioner's wedding and "that day was a very lovely day for both of them, because they were happy couples [sic] that were so much in love."

[REDACTED] and [REDACTED] state that they know the petitioner and her husband and that they are fellow church members of the petitioner who were aware that the petitioner's husband prevented her from attending church after conflicts arose in their marriage. [REDACTED] and [REDACTED] provide no probative information regarding the petitioner's purported good-faith in marrying her husband or the former couple's marital relationship, apart from the abuse.

[REDACTED] states that before her arrival in the United States in March 2003, she kept in contact with the petitioner and knew of the petitioner's marriage. [REDACTED] primarily discusses the abusive behavior of the petitioner's husband, but also states that the petitioner "tried over and over again to make the marriage work." Yet [REDACTED] does not discuss the petitioner's emotions, intentions or behavior in regards to her marriage as [REDACTED] observed through their contact during the petitioner's courtship and the beginning of her marriage and [REDACTED] provides no other probative information about the petitioner's purportedly good-faith entry into her marriage.

In his affidavit submitted on appeal, [REDACTED] states that he was aware of, but was unable to attend, the petitioner's wedding. He states, "I later visited the couples [sic] in the summer of 2001, after their wedding. This was my first time meeting [the petitioner's husband] in person, the couples [sic] look [sic] very happy and I was entertained very well." [REDACTED] provides no further information about the petitioner's behavior and intentions in marrying her husband, as he witnessed.

In his July 23, 2004 affidavit, [REDACTED] states that he invited the petitioner and her husband for prayer and counseling on three occasions, but that the petitioner told him her husband was not interested because he was of a different faith. In his May 25, 2005 affidavit, [REDACTED] states that the former couple invited him and his family to visit their home two months after their wedding and that the families regarded each other as friends and maintained a constant relationship until the

petitioner and her husband began having marital problems. In his May 2, 2006 affidavit, [REDACTED] reiterates that he once visited the former couple and attempted to counsel them regarding their marital problems. In his May 4, 2006 letter, [REDACTED] states that the former couple sometimes attended church together and that he would speak with them on those occasions. He also reports that when he visited the former couple at their home in April 2001 he “observed them interact with one another and detected no difficulties in their relationship. It appeared to me that they were living in a genuine marital relationship.” In his October 2, 2006 affidavit submitted on appeal, [REDACTED] reiterates that “[a]ll reasonable efforts were made to help resolve [the former couple’s] marital issues,” but the petitioner’s husband “had no faith in their relationship.”

The copied immigration documents confirm that the petitioner’s husband filed a Form I-130 petition on her behalf, but do not demonstrate the petitioner’s own good-faith entry into their marriage. The photographs show that the petitioner and her husband were together on their wedding day and three other occasions, but the pictures alone do not establish the petitioner’s good faith entry into marriage with her husband.

The petitioner submitted no other evidence of her allegedly good faith entry into marriage with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director’s RFE and NOID. In her May 4, 2006 affidavit, the petitioner indicates that she was unable to obtain documentation that would demonstrate her bona fide marriage because of her inability to obtain a social security number. The petitioner explains that she was unable to obtain a joint bank account, joint utilities accounts, joint lease, or file joint income tax returns with her husband because she did not have a social security number. The petitioner also states that a representative of the Internal Revenue Service (IRS) told her that she was ineligible for a tax identification number because she would eventually be able to obtain a social security number through her husband’s immigrant petition. In her August 16, 2006 affidavit, the petitioner further describes her conversation with the IRS representative and submits a copy of the IRS Form W-7, application for IRS individual taxpayer identification number.

In her May 4, 2006 affidavit, the petitioner also states, “I would never have been with [my husband] for so long and endured that violent and abusive relationship if not for the faithful and true love that I had for him.” In her September 20, 2004 affidavit, the petitioner explains that in July 2003, her husband locked her out of their apartment and she was forced to stay with a friend. When she was finally able to contact her husband in August 2003, the petitioner reports that he stated that he had moved out of the apartment and told her to meet him at a train station to retrieve her belongings. The petitioner states that when she met her husband, he just threw her belongings on the ground and walked away. The petitioner states that her husband had opened some of her letters, but she does not indicate that he failed to return any of her correspondence or other documents.

The petitioner credibly explains her lack of joint banking, utilities, residential leasing and tax documents with her husband. However, the petitioner indicates that her husband returned her belongings and she does not explain why she could not submit personal correspondence or other

documents that were jointly addressed to the former couple or otherwise showed that they held themselves out as husband and wife during the course of their marriage. More importantly, despite the fact that she submitted four affidavits in these proceedings, the petitioner has provided no detailed account of how she met her husband (in Nigeria and the United States), their courtship, wedding, honeymoon (if any), shared residence, marital life and shared experiences (apart from the abuse). The affidavits of the petitioner's friends and pastor do not compensate for the lack of the petitioner's own testimony regarding her purported good-faith entry into her marriage. The supporting affiants state that they knew the petitioner and her husband, attended their wedding or visited the former couple, but the affiants provide no probative details regarding their observations of the petitioner's allegedly good-faith entry into marriage with her husband. Accordingly, the petitioner has failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the director's decision, the record also fails to demonstrate that the petitioner resided with her husband. Although the petitioner credibly explains why she lacks joint banking, utilities, residential leasing and tax documents with her husband, the petitioner's own testimony does not establish that she resided with her husband. In her affidavits, the petitioner states the former couple's addresses, but does not provide any probative information about their purportedly joint residence. For example, the petitioner does not describe in detail their residential buildings, their apartments, home furnishings, neighbors or any of the former couple's jointly owned belongings.

More importantly, the petitioner's testimony conflicts with documentary evidence in the record. On the Form I-360, the petitioner states that she resided with her husband from February 2000 until July 2003. In her September 20, 2004 affidavit, the petitioner states that she moved in with her husband to an apartment in Silver Spring, Maryland in February 2000 and that in July 2001, the former couple moved to an apartment in Gaithersburg, Maryland. However, the former couple's marriage certificate lists the apartment in Silver Spring as the residence of the petitioner's husband, but lists a different address in Greenbelt, Maryland as the petitioner's residence. The marriage certificate is dated February 27, 2001, a year after the petitioner claims that she and her husband began residing together. The petitioner does not acknowledge or explain this discrepancy in any of her four affidavits.

The petitioner's friends and pastor also fail to provide probative details to support the petitioner's claim. [REDACTED] and [REDACTED] indicate that they knew the former couple lived together, but they do not state the location or address of either of the former couple's purportedly shared residences or discuss any visits that they made to the former couple's home. [REDACTED], [REDACTED] and [REDACTED] all state that they visited the former couple's home on one occasion, but only [REDACTED] states the former couple's address and none of these three individuals provide any probative details regarding the former couple's marital household and shared residence. Accordingly, the record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The record fails to establish that the petitioner resided with her husband and entered into their marriage in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.