

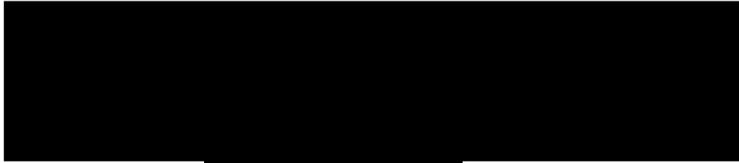
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
EAC 05 058 52190

Office: VERMONT SERVICE CENTER

Date: **JAN 09 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 sustained.

The petitioner seeks classification as an immigrant pursuant to 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 had a qualifying relationship with her husband.

On appeal, counsel submits letters 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 evidentiary 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship.

Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner[.]

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Gambia who states in these proceedings that she entered the United States on December 4, 1994 as a nonimmigrant visitor (B-2). The petitioner married P-R-\* in the Gambia on July 2, 1982 and their marriage was registered with the Islamic court in Banjul on July 6, 1982. The petitioner filed the instant petition on December 20, 2004. On November 12, 2005, the director denied the petition because the record contained evidence that P-R- had divorced the petitioner in the Gambia in 1983. The petitioner, through counsel, timely appealed.

On July 27, 2006, the AAO informed the petitioner of the derogatory evidence in the record regarding the divorce, supplied her with copies of the two relevant documents and granted the petitioner 15 days to respond. Counsel requested and was granted three extensions of time to respond to the notice of derogatory evidence.

The record contains the following evidence relevant to the petitioner's marital relationship:

- The petitioner's November 12, 2004 and September 21, 2005 written statements;
- "Form A" from the "Register of Marriages" of Banjul, the Gambia that is affixed with the seal of the Islamic Court in Banjul and which states that the petitioner married P-R- on July 2, 1982 and that their marriage was registered on July 6, 1982;
- Letter dated November 4, 1999 from [REDACTED], Cadi, Islamic Court in Banjul, who certifies that the petitioner was married to P-R- and that their marriage was registered with the Islamic Court in Banjul on July 6, 1982;
- "Form B" from the "Register of Divorces" of Banjul, the Gambia that is numbered 2799, affixed with the seal of the Islamic Court in Banjul and which states that the petitioner and her husband were divorced on June 16, 1983 and that their divorce was registered on July 18, 1983;
- Letter dated September 7, 1987 from the Registrar General's Office of the Ministry of Justice in the Gambia, which states that according to the Registrar's records, P-R- never contracted a civil or religious marriage in the Gambia;
- An undated, handwritten letter to the petitioner from her husband in which he states that he married an American girl in 1986 in order to get his "green card" and that they later divorced;

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\* Name withheld to protect individual's identity.

- A copy of the marriage license and certificate between the petitioner's husband and D-D-\*, which shows that they were married on October 11, 1986;
- A copy of the divorce decree of the petitioner's husband and D-D-, filed on June 2, 1992, which states that the former couple has two daughters born in 1986 and 1987;
- A letter dated January 16, 2006 from [REDACTED] of the Islamic Court in Banjul, which states that since the registration of the petitioner's marriage to her husband, their "marriage is still on."
- The facsimile of a letter dated December 4, 2006 from the Senior Cadi of the Kanifing Islamic Court in the Gambia, which states that the divorce certificate of the petitioner and her husband is invalid. This document was submitted on appeal.

The evidence indicates that the petitioner had a qualifying relationship with her husband despite his repeated bigamy. In her November 12, 2004 statement, the petitioner describes the former couple's courtship and wedding in probative detail. She further explains that her husband left the Gambia on December 8, 1983 and that the former couple communicated thereafter through telephone calls and letters. The petitioner states, "In one letter he sent me he explained that he married one American woman in order to get his green card, but now they had finally gotten divorced. I was surprised that he did that. But he assured me it was for the green card, so I did not worry." The petitioner reports that when her husband returned to the Gambia in 1994, he brought two little girls who he said were his daughters. The petitioner also states that in February 1995 when she had joined her husband in the United States and was pregnant with their fourth child, she found out that her husband was married to another Gambian woman in the United States.

The weight of the documentary evidence from the Gambia indicates that the petitioner nonetheless had a qualifying relationship with her husband. The 1983 divorce registration and the 1987 letter from the Registry General's Office (regarding the alleged single status of the petitioner's husband) are contradicted by the 1982 marriage registration, the 1999 verification of the marriage by the Islamic Court in Banjul, the 2006 letter from the Islamic Court in Banjul reaffirming the validity of the petitioner's marriage, and the December 4, 2006 letter from the Kanifing Islamic Court, which states that the 1983 divorce registration is invalid and is being canceled by the court.

Despite her husband's repeated bigamy, the petitioner has established that she married her husband in the Gambia and she has demonstrated her belief that the marriage was valid. Accordingly, the petitioner has established her qualifying relationship with her husband pursuant to section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. The petitioner has demonstrated her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition shall be approved.

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\* Name withheld to protect individual's identity.

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 met that burden. Accordingly, the appeal is sustained.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.