

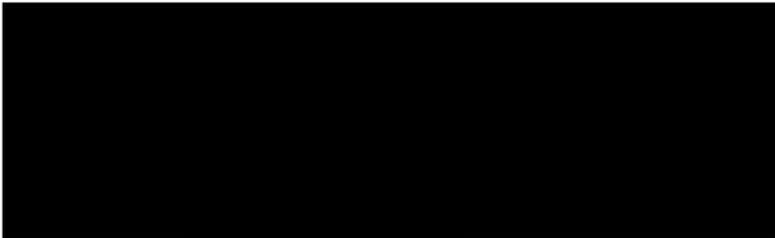
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U.S. Citizenship
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Services

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FILE: [redacted]
EAC 05 255 52496

Office: VERMONT SERVICE CENTER

Date: **JAN 18 2007**

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, 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 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen spouse.

The petitioner, through counsel, timely appealed.

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) states, in pertinent part:

(vi) *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.

* * *

(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.

The petitioner in this case is a native and citizen of Nigeria who entered the United States on June 29, 2002 as a B-2 nonimmigrant visitor. On April 2, 2004, the petitioner married [REDACTED] a U.S. citizen, in Marietta, Georgia. The petitioner filed the instant Form I-360 on September 22, 2005.¹ As it related to his claim of abuse, with his initial filing the petitioner submitted a personal statement in which he claimed that a few months into his marriage his spouse began taking "secret" phone calls from men in the middle of the night, talking in chat rooms on the Internet and began to ignore the petitioner. The petitioner further claimed that his spouse responded to his request for a "new beginning" with "immigration threats . . ." The petitioner described one incident where his spouse screamed at him at the movie theater, took the car keys and left the petitioner. The petitioner claimed that later that same evening his spouse began to push and shove the petitioner, called him names, and ultimately grabbed a kitchen knife and threatened him. Although the petitioner claims that he called the police, he indicated that once the police saw that his spouse worked for the Sheriff's Department, they did not take his claim seriously. The petitioner described a second incident which took place on a trip to Baltimore at his cousin's home. He stated:

When we got back to the house, she went into the bathroom and packed all her stuff and told my cousin that she was leaving. I walked downstairs to see what was wrong and she began yelling at me in front of my family. She was saying how she would "start drama if she wanted to start drama." I responded that I didn't do anything and that she shouldn't make a scene in front of everyone. She then came to my face and said that "you ain't seen nothing yet." She then punched me in the face in front of everyone.

That same weekend the petitioner further claimed that his spouse began hitting him and pushing him while in the car until the petitioner was forced to jump out of the car. Finally, the petitioner claimed that, in total, he called the police on four separate occasions. He stated:

The first time was when [REDACTED] mother was at the house after she got the knife. The second time was when [REDACTED] pushed me up against a wall and I called the police. The third incident occurred when we got into another fight and she again, pulled a knife out and she began chasing me around the apartment. I told her we need to be civil and I was going to call the police if she didn't stop. She told me she would deport me if I called the police, and I asked her nicely to put down the knife. She all of a sudden lunged for my stomach and my belt

* Name withheld to protect individual's identity.

¹ Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, and a Form I-485, Application to Adjust Status. The Form I-130 was withdrawn by the petitioner's spouse on June 7, 2005 and the Form I-485 was subsequently denied on July 9, 2005.

stopped the knife and she backed off. I called the police immediately and again, when they came over, [REDACTED] showed them her badge and they told us to work out our differences.

The fourth time I called the police was on August 8, 2005. The reason I remember this date so vividly is because this was the first time the police wrote a report. I was yelling at the top of my lungs to please write a report. On this date, I was trying to get onto the computer and [REDACTED] did not want me to. She got angry and cut the computer cord. She then cut the phone cord so that I could not call anyone. She then began grabbing things that I gave her and cut up a teddy bear that I had given her. All the while, she was screaming that she was going to get me deported.

The petitioner attached a copy of the police report detailing the fourth incident and a copy of an email submitted by the petitioner to the Service reiterating the claims made in his personal statement.

The petitioner also submitted four affidavits from friends, co-workers, and family members. The first affidavit, submitted by [REDACTED] and [REDACTED], indicates that the affiants “noted a little bit of aggression in the way [1-J-] was treating [the petitioner] so we stepped in and tried to abate the situation as best as we could.” The affiants further claim that one evening the petitioner called them on the phone and told them that his spouse had been punching him and was “still in the act of punching him even as he was on the phone with us.” Although the petitioner indicated in his personal statement that his spouse punched him in the presence of his family members in Baltimore, neither affiant indicates that they witnessed this event despite the petitioner’s claim that they were present at the time. The second affidavit, provided by [REDACTED], a coworker of the petitioner, indicates that she witnessed the petitioner arguing with his spouse over the telephone. Ms. [REDACTED] also states that the petitioner told her that his wife attempted to stab him with a knife and had punched him in his face. However, Ms. [REDACTED] does not describe or indicate that she witnessed any visible signs of the claimed abuse, such as bruises, swelling or cuts on the petitioner’s face. The third affidavit, submitted by [REDACTED], a friend of the petitioner, indicates that the petitioner told him his spouse had tried to cut him with a knife, that she slapped him when they were in Baltimore, and that on one occasion he heard the petitioner’s spouse “in the background cursing at [the petitioner] and threatening him that [she] was going to fall the immigration on him and that she would destroy his life.” The final statement, from [REDACTED], a friend of the petitioner’s, indicates that he was told by the petitioner of the incident in Baltimore where his spouse purportedly hit the petitioner in the face and the petitioner was forced out of the car. Mr. [REDACTED] also indicates that he was told by the petitioner that his spouse had “physically us[ed] a knife . . . hitting him and cutting the telephone cord”

On November 8, 2005, the director requested additional evidence related to the petitioner’s arrest. The petitioner responded to the director’s request for evidence (RFE) on December 6, 2005. No further evidence related to his claim of abuse was submitted in response to the RFE.

On January 6, 2006, the director issued a Notice of Intent to Deny (NOID) indicating that the petitioner failed to establish a claim of abuse. In the NOID, the director discussed discrepancies between the petitioner’s statements and the documentary evidence contained in the record related to his arrest and found the petitioner’s statements to lack credibility. The petitioner responded to the NOID on March 3, 2006 by submitting an additional personal statement and statements from acquaintances and relatives. In his statement, the petitioner attempts to provide an explanation for the discrepancies found by the director related to his arrest. As it relates to his claim of abuse, the petitioner also states:

██████████ was never abusive towards me when people were around. She raised her voice and said mean things, but as for the physical abuse, no one was ever around when she did the things she did. When the first stabbing attempt happened, the first person I called was her mother. I didn't want to call the police on my wife and I knew that she would listen to her mother. Her mother came to the house but nothing was accomplished; ██████████ continued yelling at me in front of her mother.

Even when she attempted to stab me the second time, no one was home. I guess she has more sense than to try to harm me in such a dangerous way in front of people, obviously she is not going to try to stab me when people are watching. I did call the cops this time but the cops came and said that we could work things out or I could file for divorce.

Regarding the incident where I said she "punched me in front of everyone," I did not explain myself properly. We were in Maryland at the time for my cousin's wedding and were driving back to my cousin's house. She became angry with me because it took us longer than expected at the rental car place. When we got to the house, I asked her again what was wrong with her and she told me she was going to leave and go to her cousin's house who lives in Baltimore . . . ██████████ walked out of the house and I followed her into the parking lot. ██████████ then began yelling and screaming at me in the parking lot. It was around dusk time in the summer, so there were a lot of people hanging outside . . . She made contact and hit me a few times, but nothing that left bruises. I was outside trying to calm her down for about 20 minutes and I saw that my cousin and her husband . . . had come out to see if we were okay.

When I said that she "punched me in front of everyone," I meant everyone that was sitting outside the apartment complex that evening. I did not mean everyone as in my family and I should have clarified this.

The affidavit submitted by ██████████ the petitioner's cousin, indicates that he was the one who picked up the petitioner in Baltimore when he was forced to jump from the car and left on the side of the road. Mr. ██████████ indicates that there was "a mark" on the petitioner's face. The second statement provided by the petitioner's co-worker, ██████████ indicates only that the petitioner was "definitely bothered" by the problems in his marriage. However, as previously noted, although Ms ██████████ claims that the petitioner spoke of being threatened with a knife and physically assaulted by his spouse, she does not indicate that she ever saw any cuts, bruises, scratches or other evidence of physical abuse. The second statement from ██████████ reiterates the claim made in his previous statement that he was aware of the purported incident where the petitioner's spouse severed the telephone cord. In his second letter, Mr. ██████████ also indicates his awareness of the incident claimed by the petitioner where he was forced from the car in Baltimore as well as the "two times" that the petitioner's spouse attempted to stab the petitioner. The second letter from ██████████ indicates that he witnessed the petitioner and his spouse arguing and later requested him to pick him up after being punched and forced from the car. The second statement from ██████████ confirms the claim made in his initial statement that on one occasion he heard the petitioner's spouse "cursing" in the background while on the telephone.

The petitioner also submitted a psychological evaluation of the petitioner prepared by [REDACTED] Psy.D., based upon two sessions with the petitioner in February 2006.

After reviewing the evidence contained in the record, including the evidence submitted in response to the RFE and NOID, the director denied the petition on June 29, 2006, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

Upon review, as will be discussed, we concur with the director's determinations regarding the petitioner's claim of abuse and find that the petitioner has failed to overcome these determinations on appeal.

The petitioner's claims of abuse are based upon the allegations that he was verbally and physically abused and threatened and intimidated because of his immigration status. While the petitioner claims that he was attacked on several occasions by his wife who was wielding a knife, his statements are the sole evidence of this claim. While affiants have submitted statements indicating that they were aware of incidents involving the petitioner being threatened by his spouse with a knife, their awareness is based solely upon being told of the incident by the petitioner. Although the petitioner did submit a police report after one incident, the report indicates that there was a "verbal argument" between the petitioner and his spouse. It does not contain any information regarding the petitioner being threatened with a knife.

On appeal, counsel argues that the petitioner "cannot and should not be faulted because no one was witness to his wife's abuse nor should it be held that the abuse did not take place solely because no one was present at the time." While we agree with counsel that the lack of supporting testimonial evidence is not sufficient reason to deny a petition, in this instance, because all of the evidence is based upon statements made by the petitioner, we must make a determination regarding the petitioner's credibility. In his decision, the director noted discrepancies in regard to the petitioner's arrest. While we acknowledge these inconsistencies, we do not find them to be as significant as the petitioner's varying claims regarding the incident which occurred at his cousin's home in Baltimore. The petitioner initially claimed that he was punched in the face in front of several members of his family while at his cousin's home. Although the petitioner's cousin submitted an affidavit, the affidavit did not discuss this purported event. Further, the petitioner failed to submit any affidavits from any other members of his family who were present during the purported abuse. While the petitioner attempted to clarify his description of this incident in response to the director's NOID, we do not find the clarification that the incident took place in the parking lot in front of strangers, rather than downstairs in front his family to be plausible. We note that even though the petitioner's cousin submitted a second statement in response to the director's NOID, he still fails to describe any incident of physical abuse occurring either at his home or in the parking lot. Rather, he states that he saw them arguing and that later on he was told that the petitioner was punched in the car prior to jumping out of it. We find that the petitioner's varying descriptions of this incident casts doubt on his veracity and diminishes the weight to be afforded to his claims.

The psychological assessment submitted on the petitioner's behalf contains only general statements that the petitioner's spouse's behavior was "abusive" and that she would "yell at him, call him names, punch him, and threaten to have him deported." The evaluation describes only a single instance in which the petitioner claims that his spouse "grabbed a knife and told him that 'she was doing him a favor by being an American citizen.'" No other claims of verbal or physical threats or violence were described.

Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.