

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B9



FILE:



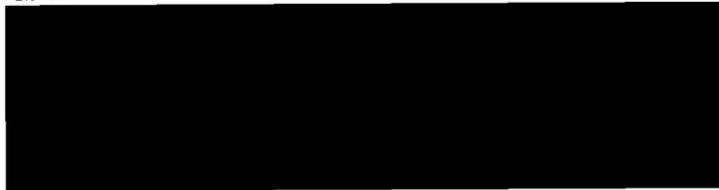
Office: VERMONT SERVICE CENTER

Date: MAY 25 2007

EAC 05 135 52909

IN RE:

Petitioner:



PETITION: Petition for 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.

*Maura Deadnick*  
fe 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 and that during the marriage, her husband subjected her to battery or extreme cruelty.

On appeal, counsel submits a brief 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:

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

\* \* \*

(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 further 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.

\* \* \*

(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.

\* \* \*

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Chad who was last paroled into the United States on January 8, 2003. On

November 24, 2000, the petitioner married N-N-<sup>1</sup>, a U.S. citizen. The petitioner filed this Form I-360 on April 8, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through prior counsel, requested additional time to respond to the RFE. On September 11, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage and battery or extreme cruelty and granted the petitioner an additional 60 days to respond. The petitioner, through prior counsel, responded to the NOID with additional evidence. The director denied the petition on October 5, 2006 on the grounds cited in the NOID.

On appeal, counsel claims that the evidence submitted on appeal, combined with the evidence submitted below, establishes the petitioner's eligibility. We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial.

*Good-Faith Entry into Marriage*

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

- The petitioner's March 31, 2005 affidavit submitted below and her October 30, 2006 affidavit submitted on appeal;
- August 26, 2006 letter of the petitioner's friend, [REDACTED] and [REDACTED] October 18, 2006 letter submitted on appeal;
  - August 20, 2006 letter of the petitioner's friend, [REDACTED] and [REDACTED] s October 23, 2006 letter submitted on appeal;
  - Letter of the petitioner's friend, [REDACTED] and [REDACTED] affidavit submitted on appeal;
  - Letter of the petitioner's friend [REDACTED];
  - Affidavit of the petitioner's friend, [REDACTED] submitted on appeal;
  - Affidavit of the petitioner's friend, [REDACTED], submitted on appeal;
  - One telephone bill and two electricity service statements jointly addressed to the petitioner and her husband and dated November 21, December 20, 2004 and January 5, 2005;
  - A Renewal Lease Form jointly signed by the petitioner and her husband on October 1, 2003;
  - Money transfer receipt for \$192 sent by the petitioner to her husband on July 17, 2003;
  - Unsigned copies of the petitioner's 2001, 2002 and 2003 income tax returns; and
  - Copies of six photographs of the petitioner and her husband at their wedding.

In her March 31, 2005 affidavit, the petitioner states that she met her husband in June 2000 at a party given by her husband's father, the petitioner's father's childhood friend. The petitioner explains that she and her husband started dating in August 2000 and she would see her husband at his father's home

---

<sup>1</sup> Name withheld to protect individual's identity.

every weekend. The petitioner states that her husband proposed marriage in September 2000, but she told him she needed time to think about his proposal and eventually accepted in November 2000. The petitioner reports that she and her husband were married at city hall and had a small African ceremony with a few close friends and family at her husband's father's home. After their marriage, the petitioner states that her husband moved in with her and they were happy until she met her husband's mother.

In her affidavit submitted on appeal, the petitioner explains that because of the former couple's financial situation, they could not afford a large wedding ceremony. The petitioner also states that she scheduled their wedding during the Thanksgiving holiday, which prevented several of her friends from attending.

The testimony of the petitioner's friends fails to fully support her claim. [REDACTED] states that she met the petitioner in 1999 at church. [REDACTED] reports that the petitioner introduced her to the petitioner's husband in 2000 and she states that "the few times that [she] spent with them," the petitioner's husband seemed very considerate. [REDACTED] states that the petitioner was full of joy and happiness when the petitioner told her that the former couple was in love and engaged. In her letter submitted on appeal, [REDACTED] confirms that she was a witness at the petitioner's wedding and attended their celebration dinner.

[REDACTED] states that he met the petitioner in 1996 and that in November 2000, she invited him to her wedding, but he was unable to attend. [REDACTED] states that he later invited the former couple out for dinner and the petitioner's husband seemed to be very in love with the petitioner. [REDACTED] does not describe the petitioner's own behavior during the dinner or at any other time prior to or shortly after her marriage. [REDACTED] states that he did not speak to the petitioner for many months after her wedding.

[REDACTED] states that the petitioner called her in the summer of 2000 to say she was in love and invited [REDACTED] to dinner with her and her husband. [REDACTED] states that the petitioner "was really happy." [REDACTED] explains that she could not attend the former couple's wedding, but later socialized with them on unspecified occasions.

[REDACTED] states that she went out with the former couple once before their marriage and that the petitioner's husband seemed very caring and in love. [REDACTED] does not describe the petitioner's behavior towards her husband on that occasion. [REDACTED] states that she was unable to attend the former couple's wedding and did not see the petitioner for several months after her marriage.

[REDACTED] states that the petitioner told her that she was getting married to the "love of her life" and invited [REDACTED] to her wedding, but [REDACTED] was unable to attend. [REDACTED] states that the former couple visited her for a weekend in August 2001, but she only discusses an incident of alleged abuse and does not offer any probative information regarding the petitioner's allegedly good-faith entry into the marriage.

states that in the summer of 2000, the petitioner told her that she had fallen in love with her husband. reports that she attended the former couple's wedding and the small ceremony afterwards. attests that the petitioner was and remains deeply in love with her husband. However, states that she was not in frequent contact with the petitioner after her marriage and she provides no probative details regarding the petitioner's entry into the marriage in good faith.

In sum, the testimony of the petitioner's friends fails to provide sufficient, probative information to establish the petitioner's entry into the marriage in good faith. Four of the petitioner's friends state that they only saw the former couple on one occasion before or after their wedding and only two of the petitioner's friends attended her wedding. states that she socialized with the former couple, but she does not specify on how many occasions she met with them. Most importantly, although the petitioner's friends all describe her as stating that she was in love with her husband, they provide no probative details about her behavior before, during or after her marriage, except as it relates to the alleged abuse.

The relevant documents also fail to establish the petitioner's claim. The telephone bill and electricity service statements are all dated after the petitioner states that she and her husband separated. The photographs and the renewal lease form show that the petitioner and her husband were married and resided together, but the documents do not establish that the petitioner entered into the marriage in good faith. The money transfer receipt is dated during a period where the petitioner states that she and her husband were separated and the petitioner does not explain the significance of the money transfer.

On the Form I-360, the petitioner states that she resided with her husband from November 2000 until September 2004. The petitioner submitted no other documentary 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. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable, despite the nearly four-year long duration of her marriage. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

Moreover, the petitioner's 2001, 2002 and 2003 income tax returns show that she filed taxes individually during those three years of her marriage. The record contains no evidence that the petitioner and her husband shared assets and liabilities or other joint responsibilities during the nearly four-year long duration of their marriage. Although the petitioner states that her husband left her on two occasions in 2002 and 2003 when he would not help her with the household bills, she states that he would work and help her when he returned. However, the documents jointly addressed to the former couple are dated after their final separation in September 2004.

Accordingly, the record does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's March 31, 2005 affidavit submitted below and her October 30, 2006 affidavit submitted on appeal;
- The affidavits and letters of the petitioner's friends: [REDACTED] and [REDACTED];
- January 13, 2005 letter from Safe Horizon in New York;
- August 22, 2006 psychological evaluation of the petitioner by [REDACTED] and [REDACTED] October 24, 2006 updated report submitted on appeal; and
- October 23, 2006 letter from [REDACTED] and his corresponding clinical neuropsychological evaluation of the petitioner dated June 26, 2005.

In her March 31, 2005 affidavit, the petitioner states that in January 2001, her husband told his mother that they had married and thereafter began emotionally abusing her. The petitioner states that her mother-in-law frequently called and insulted the petitioner with racial epithets. The petitioner reports that she when she told her husband about his mother's calls, he was irritated and angry with her, would yell at her to leave him alone or would reprimand her and accuse her of disrespecting his mother. On other occasions, the petitioner states that her husband would listen to his mother insulting the petitioner and would just laugh and not help or defend her. The petitioner explains that her mother-in-law's behavior was a frequent source of conflict and argument between the former couple.

Eventually, the petitioner states that her husband went to stay with his mother in January 2002 and did not return until June 2002. The petitioner reports that the former couple reconciled, but that her husband left her again in January 2003 and returned in September 2003 after which they moved and her mother-in-law was unable to contact them. However, the petitioner states that her husband eventually called his mother, who told him to go see her in Florida and that he left in September 2004 and never returned.

The petitioner states that she became depressed, could not sleep, lost weight and lost her job because she was unable to concentrate. The petitioner reports that she started attending weekly counseling at Safe Horizon. The Safe Horizon letter confirms that the petitioner sought counseling on January 13, 2005, but provides no further, probative information.

As the director noted, [REDACTED] in his August 22, 2006 evaluation of the petitioner, states that the petitioner reported that her husband verbally, psychologically, physically and sexually abused her during her marriage. Specifically, [REDACTED] states that the petitioner reported that her husband called her derogatory names, threw objects at her, pressured her to have intimate relations against her will and demeaned her femininity. However, the petitioner discussed none of these actions in her March 31, 2005 affidavit.

In his updated report regarding the petitioner submitted on appeal, [REDACTED] confirms his diagnosis that the petitioner continues to suffer from major depressive disorder. [REDACTED] further explains that it is not uncommon for individuals to provide more specific details when meeting with a trained psychologist than they would in other circumstances.

In her affidavit submitted on appeal, the petitioner explains that she “was subverting the pain caused by [her] husband by transferring the blame to his mother;” that she may have confused his jealous, controlling and possessive behavior as part of his love and devotion during the early part of their relationship; and that when her husband insulted her, she would “sometimes justify his actions as chiefly the behavior of his mother.” Although the director’s October 5, 2006 decision informed the petitioner of the discrepancy between [REDACTED] first evaluation and her March 31, 2005 affidavit, the petitioner, on appeal, fails to recount the specific aspects of verbal, physical and sexual abuse reported by [REDACTED] in his August 22, 2006 evaluation.

In his October 23, 2006 letter, [REDACTED] explains that he saw the petitioner on three occasions in June 2005 when she was referred by another physician for trauma she suffered in an automobile accident. [REDACTED] states, “[a]lthough her reason for coming to me was mainly her accident, she spoke most and at length about her very difficult time with her ex-husband, detailing the abuse she suffered at his hands and at the hands of his mother.” [REDACTED] provides no further, probative information. His June 8, 2005 evaluation of the petitioner diagnoses her with serious clinical depression, but only identifies her accident – not her husband’s abuse – as a causative factor of her condition.

The testimony of the petitioner’s friends fails to fully support her claim. [REDACTED] and [REDACTED] all state that they were not aware of the petitioner’s marital problems until she confided in them about her mother-in-law’s behavior and her husband’s failure to protect her. [REDACTED] and [REDACTED] state that the petitioner stayed with them on one or more unspecified occasions to, in the words of [REDACTED] “avoid him, the loneliness when he wasn’t there and avoid the mother in-law’s [sic] nasty phone calls.” However, [REDACTED] and [REDACTED] do not indicate that they ever witnessed any of the alleged abuse.

In her affidavit submitted on appeal, [REDACTED] states that on August 10, 2002, the petitioner and her husband joined her at a picnic and that when the petitioner commented that another couple passing by seemed really in love and happy, the petitioner’s husband got upset, cursed her and accused her of wanting to show her friends that she was not happy with him. [REDACTED] reports that the petitioner began crying. She also states that the petitioner’s husband would not allow her to spend time with her girlfriends alone.

[REDACTED] states that during a dinner with friends when the former couple was visiting [REDACTED] on August 18, 2001, the petitioner’s husband repeatedly called her derogatory names and referred to her with racial epithets. [REDACTED] states that the petitioner began to cry, she rebuked

the petitioner's husband and he went outside. [REDACTED] reports that for the remainder of the former couple's visit, their marital relationship was tense.

The petitioner does not discuss the specific incidents described by [REDACTED] and [REDACTED] in either of her affidavits. Although the record shows that the petitioner suffered from depression related to her husband and mother-in-law's mistreatment, the evidence related to the petitioner's mental health does not overcome the discrepancies in the record created by her failure to describe the specific aspects of her husband's alleged physical and sexual abuse as initially reported by [REDACTED] and the two incidents of her husband's alleged verbal abuse, as described by [REDACTED] and Ms. [REDACTED] on appeal. In sum, the evidence fails to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.