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U.S. Citizenship  
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FILE:



EAC 06 084 52234

Office: VERMONT SERVICE CENTER

Date: SEP 28 2007

IN RE:

Petitioner:



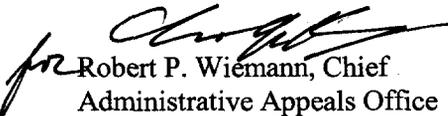
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for immigrant classification based upon that relationship.

The petitioner submits a timely appeal with no brief or 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.

(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.

(ii) *Relationship.* A self-petition file by a spouse must 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 . . . .

(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.

(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 Nigeria who entered the United States on February 17, 2004 as a nonimmigrant visitor (B-1). On May 7, 2004, the petitioner married M-F<sup>1</sup>, a U.S. citizen, in Tampa, Florida. M-F filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, on July 13, 2004. The petitioner and M-F were divorced on August 17, 2005.<sup>2</sup> The Form I-130 was denied on March 13, 2006.

The petitioner filed this Form I-360 on August 26, 2004. On April 27, 2006, the director issued a Request for Evidence (RFE) of the requisite residence, battery or extreme cruelty, good-faith entry into the marriage and good moral character. In addition, the director requested evidence of the termination of the petitioner's prior marriage to S-O<sup>3</sup> in Nigeria. The petitioner responded to the RFE on June 12, 2006, with further documentation but also requested additional time in which to submit further documentation. On July 11, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, joint residence, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner responded to the NOID on August 3, 2006 with additional evidence. The director denied the petition on November 27, 2006, finding that the petitioner had established all of the eligibility requirements except for a qualifying relationship as the spouse of a United States citizen and eligibility for immigrant classification based upon that relationship. The petitioner timely appealed.

On appeal, the petitioner does not dispute the findings of the director and does not submit any further evidence. As will be discussed below, we concur with the determination of the director. That determination has not been overcome on appeal. Beyond the director's decision, we find additional grounds that preclude approval of the petition.

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

<sup>2</sup> Case No.: [REDACTED] Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Family Law Division.

<sup>3</sup> Name withheld to protect individual's identity.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

As previously indicated, the evidence in the record demonstrates that the petitioner was married to S-O- in Nigeria prior to coming to the United States. The record contains the following documents as evidence of the termination of the petitioner's marriage to S-O-:

- A Certificate of Divorce (Suit No: [REDACTED] issued by the Lagos State, Holden at Ikeja Customary Court, dated February 27, 2004.
- A Decree Nisi of Dissolution of Marriage (Suit No: [REDACTED] issued by the High Court of Lagos State in the Lagos Judicial Division, Holden at Lagos, dated February 27, 2004.
- A Certificate of Decree Absolute (Suit No: [REDACTED] issued by the High Court of Lagos State in the Lagos Judicial Division, Holden at Lagos, dated May 28, 2004.

From the above documents, it is clear that the petitioner's divorce from S-O- was not final at the time he entered into marriage with M-F-. This fact is not necessarily disqualifying, however. Rather, we must look to the law of the place of remarriage for the determination of the validity of the marriage for immigration purposes. *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). In *Arenas*, the beneficiary did not terminate her prior marriage in Mexico until after she married the U.S. citizen petitioner in Texas. *Id.* at 174. Texas law provided that a marriage is invalid if either party was previously married and not divorced at the time of remarriage, but that the subsequent marriage becomes valid when the prior marriage is dissolved if the parties have since lived together and represented themselves as husband and wife. *Id.* at 175. The Board of Immigration Appeals (BIA) held that the marriage would be valid for immigration purposes on the date of the dissolution of the beneficiary's prior marriage, provided the couple presented evidence of their compliance with the other provisions of the Texas law. *Id.*

In this instance, we find no similar provision under Florida law which would have allowed the petitioner's second marriage to have become valid on the date of his divorce from S-O-. To the contrary, under Florida law, an attempted marriage by a person having a living spouse of an undissolved marriage is bigamous and void from its inception. *Jones v. Jones*, 119 Fla. 824 (1935). Florida law also indicates that after January 1, 1968, common law marriages entered into in the state of Florida are void. Fla. Stat. Ann. § 741.211 (West 2007). Accordingly, under Florida law, the removal of the petitioner's impediment to marry by procuring a divorce from his prior spouse did not cure his defective marriage.

As discussed above, the petitioner has failed to demonstrate that his marriage to M-F- was a valid marriage. Therefore, he is unable to establish that he had a qualifying relationship as the spouse of a

United States and that he is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Although these were the sole grounds cited by the director for denial, we find additional grounds beyond the decision of the director that preclude approval of the petition.

*Residence*

On the Form I-360, the petitioner indicated that he resided with his former spouse<sup>4</sup> from February 2004 to June 2005 and that he last resided with his spouse at [REDACTED]. With his initial submission, the petitioner submitted two bank statements from [REDACTED] Federal Credit Union from June 2005 listing the petitioner and his former spouse at [REDACTED]. The petitioner also submitted two bank statements from USF Federal Credit Union in the petitioner and his former spouse's names. However, these statements contain a post office box address and are dated October 2005, after the petitioner indicated that he no longer resided with his former spouse. Accordingly, the USF Federal Credit Union statements contain little probative value in establishing the petitioner's residence with his former spouse.

In response to the RFE, the petitioner submitted a personal statement in which he indicated that in February 2004 he resided with his former spouse at [REDACTED]. The petitioner further indicated that they later moved to a second apartment located at [REDACTED] in Tampa. The petitioner did not, however, provide any specific dates of residence at either address. The petitioner also submitted an affidavit from his former sister-in-law, [REDACTED], who states that the petitioner lived with his former spouse at [REDACTED]. [REDACTED] does not mention the address at [REDACTED] does not indicate that she ever visited the former couple at any residential address, and does not provide any further description of the petitioner's residence with his former spouse, including specific dates.

We note that the criminal report submitted by the petitioner regarding his arrest for domestic violence against his former spouse on December 26, 2004 indicates that the offense took place at [REDACTED] and the petitioner listed his address at that time as [REDACTED]. The report indicates that petitioner and his former spouse "are not currently living together."

As discussed above, the testimonial evidence contained in the record does not contain any probative information about the petitioner's purported residence with his former spouse, such as a description of their residence, their general daily or weekly schedules and routines, or any of his former spouse's or the former couple's jointly owned belongings or shared activities at home. The petitioner's former sister-in-law provides the address of one of the claimed residences but offers no further information regarding the joint residence, including specific dates. The scant documentary evidence submitted by

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<sup>4</sup> Although the petitioner did not establish the validity of his marriage to M-F-, we identify M-F- as the petitioner's "former spouse" for ease of reference.

the petitioner regarding his residence is insufficient and is contradicted by other evidence in the record. Accordingly, the petitioner has failed to establish that he resided with his former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. We, therefore, withdraw the director's finding that the petitioner met this requirement.

*Battery or Extreme Cruelty*

In his personal statement the petitioner claims that his former spouse drank alcohol, used drugs, and would withdraw money from their joint account. While the petitioner also indicates that his former spouse fraudulently obtained utilities in the petitioner's name, the record contains no evidence that the petitioner's allegations against his former spouse have been substantiated.

The petitioner also indicates that his former spouse choked him and slapped him "more than nine times" but does not provide a description of any of the incidents. The petitioner claims that on one occasion his former spouse took his wallet and slapped him in front of witnesses but the record does not contain any statement from any of the alleged witnesses. Although he is not required to do so, the petitioner does not explain why additional testimony from these witnesses is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner also alleges that when he wanted to divorce his former spouse she treated him as if he would "be killed" because she's "from the hood" and knows "a lot of people who[] can shoot [him]." The petitioner, however, does not indicate that he was actually threatened by his former spouse, that she made any statements about killing him or having someone else harm him to explain why he felt he was "treated" as if he would be killed.

As it relates to the incident in which he was charged with domestic violence and aggravated battery against his former spouse, the petitioner states that his former spouse was drunk and that she slapped him. The petitioner further claims that he did not inflict injury upon his former spouse but rather that she "hit her head by her self [sic] to the door because she [was] so heavily drunk . . . ." As an explanation for the contradictions between the petitioner's claims and those contained in the police report, the petitioner states that his former spouse lied to the police and that although he tried to explain his version of the incident, the police did not listen to him. We note that although the police report lists the name of a witness to the incident, the petitioner fails to submit any testimonial evidence from that witness or, although not required to do so, an explanation as to why such testimony is not available. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). As such, the evidence related to this incident is, at best, equivocal.

In sum, the general claims made by the petitioner fail to establish that he was the victim of any act or threatened act of violence, including any forceful detention, psychological or sexual abuse or exploitation, or that his former spouse's actions were part of an overall pattern of violence. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. We, therefore, withdraw the director's finding that the petitioner satisfied this requirement.

*Good Faith Entry into Marriage*

As testimonial evidence of his good faith marriage, the petitioner states that he met his former spouse in February 2004 through a friend and moved in with her. The petitioner provides no probative testimony regarding how he met his former spouse, their courtship, wedding, or any of their shared experiences, apart from his former spouse's alleged abuse.

The petitioner's former sister-in-law also fails to provide detailed, probative testimony regarding the petitioner's allegedly good-faith entry into the marriage. [REDACTED] states only that she witnessed their wedding, knew that they had a relationship, and "the two of them once loved each other . . . ." Ms. [REDACTED] provides no further details and does not describe any particular occasions where she observed the petitioner interacting with his former spouse.

The relevant documentary evidence also fails to establish the petitioner's good-faith entry into the marriage. The bank statements submitted by the petitioner, although indicating that the petitioner and his former spouse had joint bank accounts, do not demonstrate the joint use of both accounts. Moreover, as previously stated, the statements from USF Federal Credit Union are dated after the petitioner and his former spouse were already divorced. While the petitioner also submitted four photographs of him and his former spouse, he fails to provide any information regarding the photographs, such as the date, time, occasion or relevance of the photographs to his claim of a good faith marriage. Accordingly, the petitioner has not demonstrated that he entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. We, therefore, withdraw the director's findings that the petitioner satisfied this requirement.

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 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.