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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]
EAC 06 127 50687

Office: VERMONT SERVICE CENTER

Date:

JAN 08 2008

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:

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 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 because the petitioner did not establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

Counsel for the petitioner submits a timely appeal.

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.

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 filed by a spouse must be accompanied by evidence of citizenship of the United States citizen 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

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who claims to have entered the United States on February 20, 1990, without inspection. The petitioner was served with an Order to Show Cause and Notice of Hearing in Deportation Proceedings on June 5, 1996. On January 23, 1997, the petitioner was found deportable and granted voluntary departure. There is no evidence to demonstrate that the petitioner left the United States in accordance with his grant of voluntary departure and he remains in proceedings.¹ The petitioner married F-P-², a U.S. citizen, in Newark, New Jersey on September 8, 1997. They were divorced on April 29, 2004 by the New York State Supreme Court, Kings County.³ The petitioner filed

¹ The petitioner is currently scheduled for a hearing before the New York City Immigration Court on January 15, 2008.

² Name withheld to protect individual's identity.

³ Index No.: [REDACTED].

this Form I-360 on March 23, 2006. On August 8, 2006, the director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and good faith entry into marriage. In addition, the director requested clear and convincing evidence of the petitioner's good-faith entry into marriage pursuant to section 204(g) of the Act. The petitioner submitted additional evidence after being granted an extension of time to respond to the RFE. On October 7, 2006, the director issued a Notice of Intent to Deny (NOID) the petition based on the petitioner's failure to establish his claim of abuse. The petitioner timely responded to the NOID. The petition was denied on January 17, 2007 based upon the ground cited in the NOID and the petitioner timely appealed.

On appeal, the petitioner submits a new statement and additional evidence. As will be discussed, the petitioner has failed to overcome the director's stated ground for denial. In addition, we find additional grounds that preclude approval of the petition.

Battery or Extreme Cruelty

With his initial filing, the petitioner submitted a statement in which he claimed that his former spouse had a substance abuse problem, that she overdrew funds from their account, that she was verbally "accusatory," and "psychologically abusive and exploitative." Additionally, the petitioner claimed that his former spouse made derogatory remarks about his sexual performance, had an affair with the father of her child while she was still married to the petitioner and threatened to have the petitioner deported. The petitioner did not elaborate on the claims regarding the verbal and psychological abuse he was subjected to and provides no details regarding any specific event. While the petitioner claims that his former spouse threatened him due to his immigration status, it is unclear how the petitioner felt vulnerable to his spouse's threats given the fact that the Service was already aware of his unlawful status, had placed him in proceedings and found him to be deportable. As documentary evidence, the petitioner submitted evidence that he was treated at Woodhull Medical Center and had been prescribed medication for high blood pressure. However, the prescription and medical documents were dated in 2005 and March 2006, well after the petitioner's divorce. As such, we find no relevance between this evidence and the petitioner's claim of abuse during his marriage.

In response to the director's RFE, the petitioner submitted a second statement, a letter from his doctor, and three statements from relatives and a friend. In his second statement the petitioner reiterates the same general claims that he made in his initial statement but provides no further probative details of the claimed "emotional and verbal abuses" and "humiliation and degradation" that he was subjected to. The petitioner also submitted a letter from _____ who indicates that the petitioner is being treated for hypertension. _____ does not make any statement regarding the claimed abuse or indicate that his hypertension is related to the abuse of his former spouse. The letter from _____ the petitioner's cousin, indicates that the petitioner's spouse told _____ in confidence that "she had done things" to the petitioner and wanted to apologize "for her past bad behaviors." Mr. _____ does not describe the "things" that were done to the petitioner or elaborate on her "bad behaviors." The letter from _____ the petitioner's sister, indicates that the petitioner's former spouse "did not like the traditional recipe" that _____ made and that his former spouse stated that

the petitioner “does not need that foolishness.” [REDACTED] states that the next day, the petitioner had “swollen lips” after being verbally and physically assaulted by people he suspected to be friends of his former spouse. [REDACTED] does not describe any incident of physical or verbal abuse that she witnessed being perpetrated against the petitioner by his former spouse or indicate that the petitioner relayed any such incident to her. A third letter, from [REDACTED] a friend of the petitioner, indicates that the petitioner slept at [REDACTED]’s home when the petitioner had a “problem” with his former spouse over “a banking transaction.” [REDACTED] also claims that when the petitioner was being detained by the Service, his former spouse would not get the petitioner’s bags and did not visit him.

In response to the director’s NOID, the petitioner submitted a third statement in which he references the claims made by his relatives and friend. The petitioner did not offer any further description of the claimed abuse and submitted no further statements from his friend and relatives. While the petitioner did submit an additional letter from [REDACTED] the letter states only that he believes the petitioner “had domestic factors” that were a “contributor” to his uncontrolled blood pressure. [REDACTED], however, does not describe the “domestic factors” or provide any other description of the claimed abuse.

In finding that the petitioner failed to establish his claim of abuse, the director noted the general claims made by the petitioner and on his behalf. In addition, the director found that the petitioner’s Action for a Divorce was not sufficient to establish the petitioner’s claims as the statements were not found to be facts, but rather were simply accusations made by the petitioner.

On appeal, the petitioner argues that the statements submitted on his behalf were sufficient to establish that he had been verbally abused and threatened by his former spouse. As discussed above, the general statements made by the petitioner and on his behalf are not sufficient to establish that he was battered by his spouse during their marriage. Further, the incidents described by the petitioner and the claims contained in the statements submitted on his behalf also do not rise to the level of the other acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. As it relates to his Action for a Divorce, on appeal, the petitioner claims that the judge would not have signed the divorce decree without “approving” the preceding forms, thus implying that the judge affirmed the petitioner’s claim of “extreme cruelty” that was contained on the Action for a Divorce. We are not persuaded by the petitioner’s claim and note that according to the Judgment of Divorce, the petitioner’s marriage was “dissolved by reason of . . . abandonment.” The box pertaining to dissolution based upon “cruel and inhumane treatment” was not checked. Finally, the petitioner submits a third letter from [REDACTED]. In this letter [REDACTED] states that the petitioner’s “illness comes from the dynamics of his marital relationship,” that the petitioner believed his spouse “has powers over his fate in matters with authority,” and that he was “psychologically prevented . . . from emotional self assertion and expression.” Again, however, [REDACTED]’s statements contain only general references to abuse and fail to describe any of the claimed abuse in probative detail.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section

204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has not overcome this finding on appeal.

Although the director's decision was based upon this single ground, we note discrepancies in the record that cast doubt on the petitioner's credibility and should be taken into consideration when adjudicating any future petitions or applications. 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On the Form I-360, the petitioner indicated that he had only been married one time. The petitioner also claimed one child, [REDACTED], born June 15, 1994. On his marriage license, the petitioner indicated that he was single and had not been previously married.

On the Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by his former spouse, the concurrently filed Form I-485, Application to Adjust Status, and the supplemental Form G-325A, Biographic Information, all dated in September 1997, the petitioner also indicated that he was not previously married and had no children.

On the Form I-589, Application for Asylum and Withholding of Deportation, filed by the petitioner on March 19, 2007 the petitioner does not reference his ex-wife and claims not to have any children.

However, on the Form I-589, Application for Asylum and Withholding of Deportation, filed by the petitioner on April 24, 1996, the petitioner indicated that he had an ex-wife and a son. He stated:

[M]y ex-wife and 3 year old son were also severely battered as a result of the same incident, which eventually led to a divorce by her.

The petitioner identified his child as [REDACTED] born on August 7, 1989.

Section 208(d)(6) of the Act states:

Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A) [of the right to representation by counsel and the consequences of knowingly filing a frivolous asylum application], the alien shall be permanently ineligible for any benefits under this Act,

effective as of the date of a final determination on such application.

8 U.S.C. § 1159(d)(6).

Although the petitioner has not been found to have knowingly filed a frivolous application for asylum, we note that should this determination be made in the future, the petitioner would be permanently ineligible for any benefits under the Act, including immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act.

We do, however, find that the information provided on the petitioner's first Form I-589 application regarding his "ex-wife" and son is sufficient to question whether the petitioner was legally free to enter into marriage with F-P. Given the discrepant information, we find that the petitioner has failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immigrant classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA), (cc) of the Act. We, therefore, withdraw the director's determination on these two issues.

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.