



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

[REDACTED]

FILE: [REDACTED]
EAC 05 057 52485

Office: VERMONT SERVICE CENTER

Date: MAR 04 2008

IN RE: Petitioner:

[REDACTED]

PETITION: Petition for Immigrant Abused 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:

[REDACTED]

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 Deadrick
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 her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, prior counsel submitted a brief.

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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such

as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

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 September 19, 2002 as a nonimmigrant visitor (B-2). On October 25, 2002, the petitioner married M-S-¹, a U.S. citizen, in Maryland. M-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which he withdrew on March 15, 2005. On October 24, 2006, the petitioner was served with a Notice to Appear for removal proceedings charging her as removable under section 237(a)(1)(B) of the Act for having remained in the United States beyond her period of authorized stay. The petitioner remains in proceedings before the Baltimore Immigration Court and her next hearing is scheduled for April 30, 2008.

The petitioner filed the instant Form I-360 on December 20, 2004. On May 12, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. Prior counsel requested additional time to respond and submitted further evidence on September 19, 2005. On June 29, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish battery or extreme cruelty. The petitioner, through prior counsel, timely responded to the NOID with additional evidence. On November 16, 2006, the director denied the petition because the petitioner failed to demonstrate that her husband battered or subjected her to extreme cruelty during their marriage. Prior counsel timely appealed.

On appeal, prior counsel claimed that the director did not properly assess certain testimonial evidence. We concur with the director's determination. Beyond the director's decision, the record also fails to establish that the petitioner is a person of good moral character.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's undated statement submitted in response to the NOID;
- Letters from the petitioner's friends and relatives: [REDACTED]

[REDACTED] and [REDACTED]
A letter from the petitioner's counselor [REDACTED] MSW.

In her statement, the petitioner says that her husband had an extramarital relationship with the mother of his son during their marriage. When the petitioner told him she would speak to her cousin about his affair, her husband reportedly threatened to have her repatriated to Nigeria where his family would "deal with" her if she spoke to her family about their marital problems. The petitioner further

¹ Name withheld to protect individual's identity.

states that when her husband's girlfriend called, he ordered the petitioner to tell her that they were just family friends.

In August 2003, the petitioner says that her husband told her he would no longer pay the rent for their home. When the petitioner began pleading with him, she states that he began screaming and calling her derogatory names. The petitioner reports that her cousin, [REDACTED] (in whose house she and her husband were living), came in because the door was not locked and begged her husband to calm down, but her husband pushed her, she fell to the floor, he stepped over her and threw a condom at her and left shouting that she should not call him again or he would cast voodoo on her.

The petitioner says that she did not see her husband again until December 2003 when he came to pick up his belongings and said he was "done with" her. The petitioner states that after her husband's abandonment, she cried constantly, which gave her migraine headaches and worsened her eyesight so that she now requires reading glasses.

In his August 27, 2004 letter, [REDACTED] simply stated that the petitioner's husband stopped paying his rent and the petitioner took over the rent payments after his departure. [REDACTED] also indicated that the petitioner told him about her husband's threats of repatriation and name-calling, but he did not provide any further, probative details. In his July 17, 2006 letter submitted in response to the NOID, [REDACTED] describes two incidents in particular. On July 29, 2003, [REDACTED] reports that he confronted the petitioner's husband about his affair. According to [REDACTED], the petitioner's husband became angry at the petitioner for telling him about their marital problems, threatened to cast voodoo on her if she did not keep quiet, called the petitioner derogatory names and said he had the key to her remaining in the United States. [REDACTED] states that the petitioner's husband pushed her out of his way and she fell to the floor "because she was kneeling in his front [sic] while they were talking" and he suddenly left. On August 18, 2003, [REDACTED] reports that he ran to the petitioner's bedroom door when he heard her screaming, but the door was locked and he heard the petitioner's husband calling the petitioner derogatory names and threatening to have her deported. [REDACTED] states that the petitioner's husband opened the door, yelled at the petitioner, threw a condom at her and left.

As noted by the director, the petitioner's account of her husband's actions differs significantly from that of her cousin and housemate, [REDACTED]. While [REDACTED] describes two separate incidents that occurred on July 29 and August 18, 2003, the petitioner herself describes only one incident that occurred in August 2003 and is not consistent with [REDACTED] account of the August 18, 2003 incident.

The testimony of the petitioner's friends lacks detailed, probative information that is both consistent with the petitioner's testimony and sufficient to establish battery or extreme cruelty. [REDACTED] simply states that the petitioner spoke about "the neglect, abandonment and difficulties" after her husband had left her. [REDACTED] provides no further details. [REDACTED] states that he is

“aware of various issues experienced by the [petitioner] by virtue of the abandonment by [her] husband” and that the petitioner told him of her husband’s “threats of bodily harm and repatriation.” The petitioner herself does not discuss any threats of bodily harm made by her husband.

In her August 23, 2004 letter, _____ says that the petitioner’s husband “left the marriage without any reasonable excuse” and that the petitioner told _____ that he called her names and threatened to get her repatriated and locked up. In her July 26, 2006 letter submitted in response to the NOID, _____ states the specific derogatory names the petitioner’s husband called her and that he threatened to use voodoo on the petitioner. _____ again states that the petitioner’s husband threatened to have her repatriated and locked up, although the petitioner herself does not discuss any threats of her husband to have her imprisoned. _____ does not indicate that she ever witnessed any incidents of abuse and she provides no further, probative information.

The letter from the petitioner’s counselor _____, MSW, also fails to establish the requisite battery or extreme cruelty. _____ states that the petitioner attended group counseling regarding domestic violence for four months beginning in November 2004, over a year after the petitioner states that her husband left her. In concluding that the petitioner’s husband abused her, _____ cites the incident where the petitioner found out about her husband’s affair, her husband’s name-calling and threat to have her deported. _____ further states that the petitioner reported an incident where her husband refused to attend the petitioner’s immigration interview and “pushed her against the wall.” The petitioner herself does not describe this incident.

In sum, the petitioner has submitted testimony from five individuals. The petitioner’s account of her husband’s alleged abuse differs significantly from the statements of four of these people. While he claims to have witnessed the alleged abuse, _____ describes two separate incidents whereas the petitioner describes only one and although the petitioner claims that her husband assaulted her, _____ states that the petitioner’s husband pushed her out of the way as he was leaving and that she fell to the ground because she was kneeling in front of him at the time. _____ states that the petitioner’s husband threatened her with bodily harm and _____ reports that he threatened to have the petitioner locked up, but the petitioner herself discusses no such threats. Finally, _____ states that the petitioner’s husband pushed her against the wall when he refused to attend her immigration interview, but the petitioner herself does not discuss this incident. The remaining affiant, _____ provides no detailed, probative information.

On appeal, the petitioner provides no explanation for the discrepancies between her statements and those of _____ and _____. In her brief, prior counsel asserted that it was “quite all right” that the petitioner did not mention the July 2003 incident described by _____ because “corroboration on one of the events is sufficient to make the case.” Prior counsel is mistaken. There are numerous, unresolved discrepancies between the petitioner’s and Mr. _____’s account of the August 2003 incident. The petitioner states that _____ came into the bedroom because the door was not locked, that her husband pushed her, she fell to the floor, he stepped over her, threw a condom at her and left shouting that she should not call him again or he

would cast voodoo on her. In contrast, [REDACTED] states that the bedroom door was locked, but that when the petitioner's husband finally opened the door, he told the petitioner she would be deported, threw a condom at her and left.

Prior counsel further asserted that [REDACTED] "gave evidence of her actual eyewitness account of acts of abuse." Again, prior counsel is incorrect. [REDACTED] states that the petitioner did not confide in her about her marital problems until months after her husband's departure. [REDACTED] reports trying to mediate for the former couple, but she does not indicate that she actually witnessed any incidents of abuse.

Finally, prior counsel claims that the behavior of the petitioner's husband was abusive under the "1998 Virginians Against Domestic Violence Report." Prior counsel provides no citation for or excerpt from this document and fails to demonstrate why the report should be recognized as a persuasive authority.

In sum, the relevant evidence does not indicate that the actions of the petitioner's husband rose to the level of battery or extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has failed to demonstrate that her 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.

Good Moral Character

Beyond the decision of the director, the petitioner has also failed to demonstrate that she is a person of good moral character. The petitioner submitted a letter from Global Investigative Services stating that no felony or misdemeanor records were found for the petitioner in the district court of Maryland between April 7, 1997 and April 7, 2004. This letter is from a private company and does not comply with the regulatory requirements. The petitioner did not discuss her moral character in her statement and did not submit police clearances or state criminal background checks from every locality where she had lived for at least six months in the three years preceding the filing of this petition, as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner did not explain that such clearances or checks were unavailable. Accordingly, the petitioner has not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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).

The petitioner has not demonstrated the requisite battery or extreme cruelty and good moral character. She 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.