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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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FILE:

[Redacted]  
EAC 04 201 52628

Office: VERMONT SERVICE CENTER

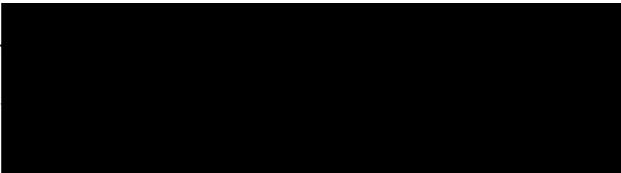
Date: JAN 11 2006

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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Nigeria who is seeking 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 the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] June 3, 2002 in New Jersey. On November 7, 2002, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. On June 25, 2004, the petitioner filed the instant Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage. The Form I-130 petition and the Form I-485 application were automatically terminated on July 8, 2004. The Form I-360 petition was denied on May 2, 2005. The petitioner, through counsel, filed a timely appeal dated May 31, 2005. On July 26, 2005, the AAO received a supplement to the petitioner's appeal to include a brief and a clinical assessment from a licensed psychologist.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*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 abused 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.

Further, the regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*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 . . . 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 . . . .

At the time of filing, to support her claim of abuse, the petitioner submitted an unsworn personal statement, a letter from Rev. S.A. Aquart, and two affidavits from friends and relatives. In her statement, the petitioner claims that she was subjected to "mental torture" because her spouse abused drugs and alcohol and threatened to throw the petitioner out of the house or move out himself. The letter from Rev. Aquart indicates that the petitioner has discussed "some of her most personal and domestic problems," but does not provide any specific details as to what those "problems" were. The statement from Grace Ohanmu, a neighbor of the petitioner and her spouse, indicates that the petitioner's spouse yells at the petitioner, physically and mentally abuses her, gets "drunk and [sic] out of control," and gets "up and leave [sic] in the middle of the night." The remaining statement from [REDACTED] the petitioner's mother-in-law, indicates that the petitioner's spouse would "abuse her," "yell

at her,” and “was really out of control.” Like the letters from [REDACTED] the petitioner’s mother-in-law does not provide any specific details about the alleged abuse.

The director determined that this evidence was insufficient to support the petitioner’s claim of abuse and on February 16, 2005, requested the petitioner to submit further evidence. In his request for evidence, the director noted that the letters submitted on the petitioner’s behalf did not provide “a detailed discussion” of the claimed mental abuse. The director further noted that while two of the affidavits submitted on the petitioner’s behalf mentioned physical abuse, the petitioner’s own statement made no such claim. The director requested the petitioner to submit further evidence, to include:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible, including an explanation of the type of abuse (e.g., verbal, social isolation, possessiveness, quality of life) suffered and the after-effects of the abuse.
- Affidavits from individuals who were present at the time the incident(s) occurred.

The petitioner responded to the director’s request on April 15, 2005 by submitting a second personal statement, an unsworn statement from a relative and an affidavit [REDACTED]. In her second statement, the petitioner claims that after her spouse lost his job, “all hell broke loose.” The petitioner states that her spouse because verbally and mentally abusive, would call her names and threaten her. The petitioner claims that on one occasion, her spouse “came home with some friends and asked for a group sex which [the petitioner] refused.” The petitioner further claims that she began to “see signs of infidelity.” The unsworn statement from [REDACTED] the petitioner’s spouse’s cousin, indicates that she “heard rumors” that the petitioner’s spouse had “returned to his old ways” and the petitioner’s spouse was being “mean and abusive.” [REDACTED] describes one incident where she went to see the petitioner and her spouse and the petitioner’s spouse was drunk and calling the petitioner names. [REDACTED] states that the petitioner “was distressed and explained that her [her spouse] was always sleeping out, would make phone calls to other women and was not the man she thought him to be.” The statement from [REDACTED] indicates that the petitioner came to him for counseling “concerning [the petitioner’s spouse’s] mental and emotional abuse” and that she requested additional counseling because her spouse was “consistently sleeping outside of his marital home.”

The director reviewed the evidence contained in the record, including the evidence submitted in response to the director’s request for evidence, and denied the petition based upon a finding that the evidence was not sufficient to establish that the petitioner had been battered or subjected to extreme cruelty by her citizen spouse.

In counsel’s brief submitted on appeal, counsel states:

Not long after the marriage, [the petitioner’s spouse’s] behavior towards his wife gradually changed. He started to physically and emotionally abuse her. Some of things he did include inviting his friends and asking her to participate in group sex; staying out overnight without explanation; calling and speaking to other girls in her presence; forcing her to performed [sic] degrading sexual acts with him; threatened her with physical harm, and calling her names in front of other people.

Counsel also submits a "clinical assessment" which appears to be made based upon the petitioner's statements during a single session with a psychologist. Because the petitioner had been put on notice of a deficiency in the evidence and was given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). If the petitioner had wanted the clinical assessment to be considered, she should have submitted it in response to the director's request for evidence, not on appeal. *Id.*

Upon review of the record that was before the director at the time of his decision, we concur with the director's finding that the record is not sufficient to demonstrate eligibility. First, we do not find the allegations that the petitioner's spouse abused drugs and alcohol or that he would stay out of the house to be sufficient evidence to establish a claim of abuse in accordance with the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Second, as it relates to the petitioner's claims that she was mentally and verbally abused, we find the evidence does not contain sufficient evidence to establish eligibility. It is noted that although counsel claims the petitioner was forced to perform "degrading sexual acts," none of the statements, including those of the petitioner, contain any mention of such a claim. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, while counsel claims that the petitioner's spouse's act of inviting his friends to participate in group sex with the petitioner was an act of sexual abuse, we note that the petitioner's statement indicated this occurred on a single occasion and the petitioner was able to refuse the request.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.