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By

[Redacted]

FILE: [Redacted]
EAC 06 199 50308

Office: VERMONT SERVICE CENTER

Date: NOV 29 2007

IN RE: Petitioner: [Redacted]

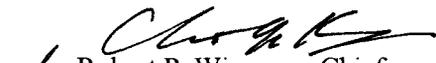
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[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.


for 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 on June 12, 2007, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith.

The petitioner, through counsel, 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.

* * *

(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 Nigeria who entered the United States on May 9, 2002 as a nonimmigrant visitor (B-2). On June 20, 2005, the petitioner married L-B-¹, a U.S. citizen, in Rockville, Maryland. The petitioner filed this Form I-360 on June 19, 2006. On December 18, 2006, the director issued a NOID based on the lack of evidence regarding, *inter alia*, the petitioner's claim of battery or extreme cruelty and good-faith entry into the marriage. The petitioner timely responded to the director's NOID on February 20, 2007. The director denied the petition on June 12, 2007, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith. The petitioner, through counsel, submitted a timely appeal with additional evidence.

On appeal, counsel argues that the director's decision was based upon an "incorrect factual basis" and an "incorrect application" of law and policy. As will be discussed, counsel's arguments and the additional evidence submitted on appeal are insufficient to overcome the findings of the director and to establish the petitioner's eligibility.

Battery or Extreme Cruelty

To establish his claim of abuse the petitioner submitted a personal statement, statements from his siblings and a friend, and a psychological evaluation. In his personal statement, the petitioner claimed that his problems with his spouse began several months into their marriage when he suspected his spouse of cheating. The petitioner claimed that his spouse received phone calls at irregular hours, that she went out to dance clubs at night, and spent money that could have been used for savings or to pay off their debts. The petitioner stated that his suspicions were confirmed several months later when he returned home to find his spouse in bed with another man. The petitioner also claimed that during their marriage, his spouse "treated [him] like a roommate," and would tell him that he "was not fulfilling to her." The petitioner further claimed that when friends would come to the house, his spouse would embarrass him and curse him out. The petitioner states that he was depressed and stressed and "ostracized" due his spouse's "unpredictable" nature.

The statement from the petitioner's brother, [REDACTED] indicates that conversations with the petitioner's spouse about "what is expected of the [N]igerian wife . . . was accepted with reservations." [REDACTED] claimed that he began to notice that his brother was withdrawn and distant and that when he questioned the petitioner, the petitioner changed the subject. [REDACTED] then describes an incident which occurred in December 2005 where he went to the petitioner's residence with L-B-. [REDACTED] states that he heard "loud remarks which were not altogether audible," that L-B- greeted him with a "blank" expression rather than a smile and he was not allowed to enter the apartment. [REDACTED] claims that L-B- made "distasteful comments" about the petitioner and stated that he was "an imbecile, a good for nothing, hopeless and worthless thing."

¹ Name withheld to protect individual's identity.

The second statement submitted on the petitioner's behalf by his other brother, [REDACTED] described a visit [REDACTED] made to the petitioner's apartment in November 2005. [REDACTED] claimed that upon arriving, he was "greeted with a little sense of hostility." [REDACTED] claimed that when he was finally allowed into the apartment he saw that the petitioner was in "a living hell," and that he witnessed L-B- calling the petitioner names and telling him that he was a "fool" and a "worthless man."

The statement from the petitioner's friend, [REDACTED] describes a similar incident which also occurred in November 2005. [REDACTED] stated that prior to her visit she believed that the petitioner and L-B- were having an argument and when they arrived, L-B- refused to let them into the apartment. [REDACTED] then claimed that L-B- began calling the petitioner names. [REDACTED] indicated that after inquiring with mutual friends, she learned that L-B- would throw "sporadic tantrums," threatened to embarrass the petitioner and barred him from using her phone.

The psychological evaluation completed by [REDACTED] after a single interview with the petitioner on June 29, 2006, indicates that petitioner feels he has "endured severe psychological trauma and abuse in his marriage which was exacerbated by the wife's subsequent departure from their home this year." In the evaluation, [REDACTED] states that the petitioner suspected his spouse began smoking marijuana and drinking and that she was verbally abusive, facts not alleged in the petitioner's statement. [REDACTED] also submitted an addendum to the initial evaluation in February 2007, in which she provides examples of the petitioner being called names such as "dumb" or "stupid" and other negative comments such as being "not good for anything." Finally, [REDACTED] describes the petitioner as being socially isolated.

The director denied the petition, in part, based upon discrepancies noted between the statements made by the petitioner to [REDACTED] in his personal statement and the statements made by his siblings and friend. The director also found it "unusual" that the petitioner failed to discuss his previous marriage in his psychological evaluation and noted that the claims made by the petitioner in the instant case were similar to those he made during the dissolution of his prior marriage.

On appeal, as an explanation for the discrepancies cited by the director, counsel for the petitioner states that while the petitioner did make "casual references" about the abuse to his family members, he did not discuss his situation in detail until after their separation. As further explanation and clarification, the petitioner, [REDACTED], and [REDACTED] submit additional statements. Counsel also provides further explanation and statements from [REDACTED] regarding the petitioner's alleged failure to discuss his prior marriage. We find these statements sufficient to overcome the director's concerns regarding the inconsistencies in the record. However, while the petitioner has sufficiently overcome this finding of the director, the evidence submitted by the petitioner fails to establish that he was battered or subjected to extreme cruelty by his spouse.

Counsel argues that the testimonial evidence of the petitioner and his affiants and the psychological evaluation demonstrate that the petitioner was subjected to extreme cruelty. Specifically, that he was

verbally abused and socially isolated during his marriage. We do not agree. The fact that the petitioner's spouse had an affair and that she would call him names is not sufficient to establish a claim of extreme cruelty. Similarly, the claim that L-B- would not let the petitioner use her cell phone and that he avoided going places with his spouse for fear of embarrassment is not sufficient to establish a claim of abuse. We note that in his personal statement submitted below the petitioner claims that his spouse told him he could do "whatever [he] wanted with [his] money and time," and that he, in fact, intensified his job search to have a place to go during the day. Further, as previously noted, [REDACTED] confirms that he continued to visit the petitioner at his apartment. Such facts are not indicative of a claim of social isolation.

As discussed above, the claims made by the petitioner and the incidents described in the statements submitted on his behalf do not rise to the level of the 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. The petitioner's spouse's actions, while unkind at times, do not appear to have been part of an overall pattern of violence against the petitioner. 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.

Good Faith Entry into Marriage

As testimonial evidence of his good faith marriage, the petitioner submitted his February 9, 2007 personal statement and statements from family and a friend. In his statement, the petitioner describes meeting his spouse at a party in October 2004. He claims that they dated casually for a time then began to develop more of an interest in each other. The petitioner also describes conversations where they discussed having a family, issues that needed to be resolved, and shared goals. The petitioner offers no further details of their life together after their marriage, other than as it relates to his claim of abuse. The affidavit from [REDACTED] offers some details regarding the petitioner's courtship with L-B- and describes an occasion where they spent time together prior to their marriage in December 2004. The statement submitted by [REDACTED] states only that the petitioner's marriage to L-B- is "well known" to him but provides no details regarding the petitioner's courtship with L-B- or his intent in marrying L-B-. Rather, [REDACTED] statement focuses on events that occurred "shortly after the ceremony" that involve the petitioner's claim of abuse. In her affidavit, [REDACTED] generally states that she was happy when she was told of the petitioner's "new life and marriage." She does not, however, indicate that she was aware of L-B- prior to her marriage to the petitioner and provides no details regarding their relationship prior to their marriage or offer any information regarding the petitioner's intent in marrying L-B-.

As documentary evidence of his good faith marriage, the petitioner submitted documents from Care First Blue Choice indicating that the petitioner had insurance coverage beginning on January 1, 2006 and five photographs. Despite a claimed relationship of nearly a year and a half, all five of the petitioner's photographs consist of photographs taken on his wedding day. The record does not contain

any photographs which document the period of time leading up to the petitioner's marriage which would assist in establishing that the marriage was entered into in good faith. As it relates to the insurance documents, while we do not dispute that the petitioner had health insurance coverage, the evidence fails to establish that the coverage was through his spouse or shared jointly with her.

In denying the petition, the director found that the testimonial evidence of the petitioner's good faith marriage was "abbreviated," that the photographs were not indicative of a "historical relationship," and that the insurance documents did not clearly establish that the petitioner had a joint insurance policy with his spouse.

On appeal, while the petitioner "expressly state[s]" that he was under the health insurance policy provided to L-B- through her job, he provides no further evidence to support this claim. Counsel argues that despite the lack of evidence regarding the health insurance, the testimonial evidence and the photographs are sufficient to establish that the petitioner's marriage was valid at its inception. Counsel states that the director "completely ignore[d]" the testimonial evidence of the petitioner and his affiants "who all stated that the Petitioner was extremely happy with his relationship before his marriage and that he was looking forward to a pleasant life with his spouse." Upon review, we are not persuaded by counsel's statements. First, contrary to counsel's characterization of the testimonial evidence, the statements from [REDACTED] and [REDACTED] contain no description or insight into the petitioner's intent in marrying L-B-. The remaining testimonial evidence, which consists of the petitioner's and [REDACTED] statements, although providing more specific details related to the petitioner's relationship with L-B- prior to their marriage, by themselves, are insufficient to establish the petitioner's good faith intent at the time of his marriage. Although the petitioner attempts to provide an explanation for the lack of documentary evidence of a good faith marriage on appeal, we do not find his explanations are sufficient. First, as it relates to photographs, the petitioner claims that pictures that were taken as a family "were taken and hid [sic] from [him]." He fails to explain, however, how he was able to obtain the pictures that were submitted into the record. Second, while the petitioner also claims that he was unable to obtain a joint credit card or bank accounts because of his spouse's bad credit history, he fails to provide probative details regarding other assets or liabilities that they shared, such as tax documents, leases, or utility bills which may have been available to him during his marriage.

As discussed above, the sole evidence of the petitioner's good faith marriage consists of two statements which only generally discuss the petitioner's relationship and feelings for his spouse prior to their marriage. Given the inadequacy of the documentary evidence, the lack of information in the testimonial evidence regarding joint assets, specific shared events and details to show that the petitioner intended to establish a life with his spouse further lessens the probative value of the testimonial evidence. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.