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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090**



**U.S. Citizenship
and Immigration
Services**

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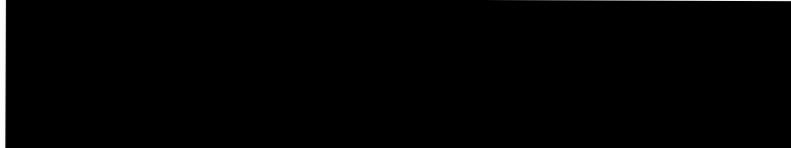
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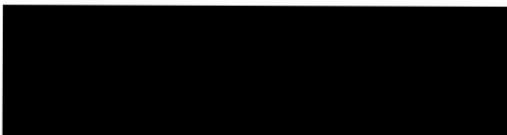
IN RE:

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 October 6, 2008, determining: that the petitioner had not established a qualifying relationship with a United States citizen or lawful permanent resident; that the petitioner had not established eligibility for immigrant classification based on a qualifying relationship; that the petitioner had not established that he had been battered or subjected to extreme cruelty by his United States citizen spouse; and that the petitioner had not established that he is a person of good moral character.

On appeal, counsel submits a brief, previously submitted documentation, as well as an October 28, 2008 response from the California Department of Justice regarding the petitioner's criminal history based on his fingerprints.

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 explained 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who claims on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that he entered the United States in 1990 as a nonimmigrant visitor. The petitioner married M-J-,¹ the claimed abusive spouse on January 2, 1994 in the State of Nevada. The petitioner noted on the Form I-360 that the couple resided together from June 2, 1994 to January 1997. The record includes a Form I-130 filed on the petitioner's behalf by M-J- which was denied on August 19,

¹ Name withheld to protect the individual's identity.

2000 by the San Francisco District Director based on a determination that the petitioner was previously married to another woman and had failed to submit evidence of the termination of the marriage. The Board of Immigration Appeals dismissed a subsequently filed appeal on the Form I-130 matter on May 30, 2003. The petitioner filed the Form I-360 that is the subject of this appeal on July 17, 2007. The director issued a Notice of Intent to Deny (NOID) the petition on March 31, 2008. Upon review of the response to the NOID the director denied the petition on October 6, 2008.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The director in the March 31, 2008 NOID, informed the petitioner: of the results of an overseas investigation in Nigeria which revealed that the petitioner was married in a court marriage in Nigeria on August 13, 1984 to [REDACTED] that the record indicated that the petitioner presented his Nigerian marriage certificate to the United States Consular Officer in order to obtain a visa to the United States; that it appeared that the petitioner attempted to recant the information regarding his Nigerian marriage in order to establish eligibility for a different immigration benefit, the Form I-130 filed on his behalf; and that the Board of Immigration Appeals upheld the decision of the San Francisco District Director finding that the petitioner was not eligible for the Form I-130 immigration benefit, that the petitioner had engaged in immigration fraud, and that he had given false testimony in order to obtain a benefit.

Counsel provides the same documentation that had previously been provided to legacy Immigration and Naturalization Service (INS) for consideration regarding the issue of the petitioner's Nigerian marriage including: (1) a November 27, 1995 declaration from [REDACTED] and solicitor, indicating that he has known the petitioner for more than 35 years, that no one answers to the name [REDACTED] in the petitioner's family, that [REDACTED] is the petitioner's younger sister and her married name is [REDACTED], and that when the petitioner left Nigeria he was not married but was a bachelor; (2) a letter dated November 27, 1995 from the Lagos Mainland Local Government certifying that the petitioner did not appear in its records as being married; (3) a November 24, 1995 letter from Surulere Local Government indicating that its records did not show that the petitioner had contracted marriage with any person within its jurisdiction; (4) an affidavit from [REDACTED] dated October 9, 1995 stating that she is " [REDACTED]" younger sister and that [REDACTED] never married any woman before leaving Nigeria and that any marriage certificate before his departure to the United States of America should be regarded as null and void; and (5) an affidavit from [REDACTED] dated October 9, 1995 stating that he is the petitioner's brother and that the petitioner did not marry in Nigeria and left Nigeria as a bachelor and that any marriage certificate or declaration before his departure to the United States should be regarded as null and void. The record also includes a November 27, 1995 letter from [REDACTED], solicitor, explaining that the Mainland Local Government and the Surelere Local Government are the two possible places in Nigeria where a marriage could have been registered.

The record also includes a copy of the petitioner's visa application to the United States which indicates that the petitioner is married to [REDACTED] that he was married to her on August

13, 1984 in a court marriage, that he has a four and one-half year old child and a three-year old child and that his wife is a radiographer. The petitioner in an April 23, 2008 personal statement declared that he had never been legally married in his home country and thus cannot produce a valid divorce decree and that he “falsely claimed to be married at the American Consulate in the hopes that [he] would be granted a non-immigrant visa” to the United States.

On appeal, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) presents an impossible burden for the petitioner to meet. Counsel contends that the petitioner’s marriage to M-J- is a valid marriage as the petitioner was not previously married. As the director found, this same issue was decided by the Board of Immigration Appeals based on the very same evidence submitted to USCIS and to the AAO. Like the Board of Immigration Appeals, the AAO finds that the affidavits and documents submitted are not sufficient to overcome the petitioner’s certification on the April 23, 1990 application for a nonimmigrant visa. The AAO observes that to hold otherwise would allow an alien to offer a declaration to USCIS to obtain one type of immigration benefit and then recant the testimony when that declaration interferes with obtaining a different immigration benefit.

As the record includes the petitioner’s declaration to the United States Consulate in Nigeria that he was married while in Nigeria and the record does not include evidence of a divorce terminating that marriage; the petitioner’s subsequent marriage to M-J- is not a valid marriage. Therefore, the petitioner is unable to establish that he had a qualifying relationship as the spouse of a United States citizen 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).

Battery or Extreme Cruelty

The record does not include a statement from the petitioner detailing circumstances or specific events related to his claim that his spouse subjected him to extreme cruelty² during their marriage. The petitioner has provided a June 23, 2007 evaluation prepared by [REDACTED] that was submitted with the Form I-360. In the report, [REDACTED] indicated that she interviewed the petitioner for two hours on June 4, 2007. [REDACTED] reported that she learned the following from the petitioner: that his wife was stressed financially and after the couple was married, the wife continually asked the petitioner for financial help; that his wife was a cigarette smoker and a gambler; that she claimed that she was injured frequently on the job to obtain workman’s compensation; that confrontation with his wife escalated during their marriage due to her demand for financial help; that when she was angry she would say “[i]f you don’t get your act together, you’re going to get it;” that from the way she talked, the petitioner thought that she meant that she would turn him in to the INS; and that she did not help him through his immigration process. [REDACTED] further reported that when the petitioner started refusing his wife’s demands for money, she started threatening him, became very

² The petitioner does not claim that he was subjected to physical abuse, but only that his spouse subjected him to extreme cruelty.

hostile, and her attitude was cold and that she would stay with her parents and then come and stay with the petitioner and then one day she just did not come back. [REDACTED] appears to conclude that when the petitioner lived with his wife his life was incredibly stressful. [REDACTED] noted that the petitioner was frank, talkative, cooperative, laughed good-naturedly often after questions were posed to him. She diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood and indicated that he presented with symptoms and characteristics of a battered spouse. [REDACTED] included a paragraph in her June 23, 2007 report that related to another individual in an abusive relationship which suggests that the June 23, 2007 report was written using a standardized format. In response to the director's NOID requesting evidence that the petitioner had been subjected to extreme cruelty or battery, counsel for the petitioner indicated that the petitioner did not have any other material proof of the cruelty that he suffered at the hands of his spouse.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The petitioner has not submitted a statement detailing specific events or threats or describing any circumstances sufficient to demonstrate that his spouse's behavior was an attempt to control him or was part of a pattern of overall violence. The evaluation prepared by [REDACTED] on June 23, 2007 provides the only information regarding the petitioner's difficulties with his spouse. This information indicates that the petitioner's spouse had a gambling problem and constantly demanded money from the petitioner. The record does not include specific testimony from the petitioner as it relates to threats by his spouse regarding his lack of immigration status. The petitioner does not provide chronological detail and substantive testimony regarding the circumstances of the claimed cruel events in the marriage. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-J-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The record does not evidence that any threats resulted in the petitioner's psychological trauma. The record is simply insufficient in this regard.

The AAO has reviewed the evaluation prepared by [REDACTED] based on a two-hour interview more than ten years after the alleged abuse occurred. The AAO observes that [REDACTED] does not provide examples of the causal relationship of specific abuse that is consistently detailed to her diagnosis of the petitioner's adjustment disorder with mixed anxiety and depressed mood. [REDACTED] does not detail the underlying trauma or causative factors that support her conclusion that the petitioner presented with the symptoms and characteristics of a battered spouse. The AAO notes specifically that [REDACTED] does not relate the petitioner's current behavior and attitude which she found to be frank, talkative, cooperative, including good-natured laughing with her conclusory opinion that the petitioner demonstrated the symptoms and characteristics of a battered spouse. The AAO notes as well that [REDACTED] does not recommend that the petitioner seek medical help or a medical examination and evaluation for depression or indicate that she treated or recommended any treatment for the petitioner. The AAO finds that the evaluation prepared by [REDACTED] lacks probative value as it does not include a reasoned opinion based on facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of

a battered spouse.

The AAO finds that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. As generally described in [REDACTED]'s evaluation, M-J-'s actions, while unkind and inconsiderate, 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. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. The director determined that in this matter, although the petitioner had submitted documentation relating to his arrest record and the disposition of the case from his arrest for soliciting a prostitute, the petitioner had not provided police clearances for all his known aliases or a fingerprint clearance. On appeal, counsel for the petitioner submits a report from the California State Department of Justice based on the petitioner's fingerprints that reveal the petitioner's only arrest is for disorderly conduct/soliciting a prostitute.

The petitioner's October 18, 2000 arrest for violation of California Penal Code 647(b), disorderly conduct, a misdemeanor involving solicitation of or engaging in any act of prostitution resulted in the petitioner's plea of no contest to the charge and a finding that he was guilty. The petitioner was sentenced to two days in jail, time already served, 24 months probation, and payment of a fine.

The record also includes the petitioner's April 23, 2008 declaration that he "falsely claimed to be married at the American Consulate in the hopes that [he] would be granted a non-immigrant visa" to the United States. The petitioner's representation that he falsely testified in order to obtain an immigration benefit is sufficient to raise the question of the petitioner's good moral character. The AAO notes that the fact that any person is not within any of the classes identified in section 101(f) of the Act shall not preclude a finding that for other reasons such person is or was not of good moral character. *See* section 101(f) of the Act, 8 U.S.C. § 1101(f). In addition, the statute proscribes no time period during which the self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). While the regulation at 8 C.F.R. § 204.2(c)(2)(v) specifies a three-year span for police clearances and criminal background checks, the regulation does not limit the temporal scope of USCIS's inquiry into the petitioner's moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). The petitioner's declaration that he provided false testimony regarding his marital status whether truthful or not impacts negatively on his good moral character and further raises questions regarding his continued quest for

obtaining status in the United States. Upon review of the totality of the record, including the petitioner's misrepresentations to the USCIS, the AAO does not find that the petitioner has established that he is a person of good moral character.

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.