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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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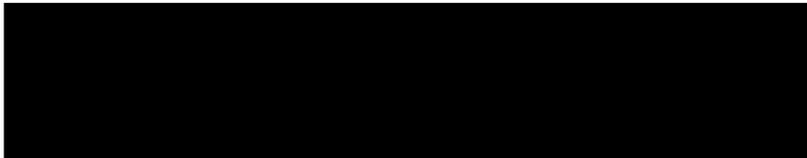
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DATE: **MAY 16 2011** OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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)

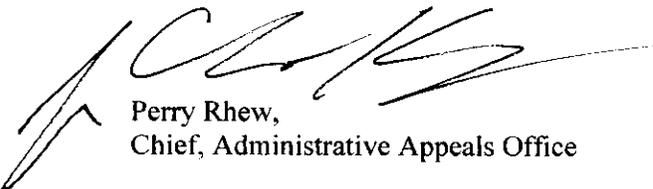
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; (2) that her husband subjected her to battery or extreme cruelty during their marriage; and (3) that she married her husband in good faith. On appeal, counsel submits an appellate brief.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

- (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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Nigeria, married S-F,¹ a citizen of the United States, on May 27, 2003. The petitioner filed the instant Form I-360 on May 1, 2008. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on August 5, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

Counsel's argument on appeal that the director was required to issue a notice of intent to deny (NOID) prior to denying the petition is incorrect. Although the regulation at 8 C.F.R. § 204.2(c)(3)(ii) previously required issuance of a NOID prior to denying a petition, that requirement was eliminated in 2007.² The new rule, which became effective on June 18, 2007, no longer requires the director to issue a NOID before denying an immigrant petition filed under section 204(a)(1)(A)(iii) of the Act. The petitioner filed the instant petition on May 1, 2008, nearly eleven months after the new rule became effective. Moreover because the director issued a request for additional evidence prior to

¹ Name withheld to protect individual's identity.

² *See* 72 Fed. Reg. 19100 (Apr. 17, 2007).

denying the petition, the petitioner was afforded ample opportunity to establish her eligibility for the benefit sought.

Joint Residence

The petitioner stated on the Form I-360 that she resided with S-F- from May 2003 until April 2005 and, when she filed the petition, she submitted utility bills; paperwork regarding a joint bank account, bail bond, an automobile insurance policy, monies the petitioner sent S-F- during his incarceration; letters the petitioner and S-F- wrote one another; and an identification card for S-F- issued by the Texas Department of Public Safety. In response to the director's request for additional evidence the petitioner submitted copies of rent receipts and additional information regarding the joint bank account and automobile insurance policy.

However, the petitioner's documentary evidence does not demonstrate the requisite joint residence. The information regarding a joint banking account is not evidence of a shared residence as there is no indication that both individuals accessed, and used, the account. Nor is there evidence that both individuals used the debit cards that were presumably linked to this account: while the debit card issued to the petitioner appears to have been swiped many times, the debit card issued to S-F- does not appear to have been used. Nor is the bail bond evidence that the couple shared a residence, as it provides separate addresses for the petitioner and S-F-. The automobile insurance policy, which was effective for a 30-day period in 2004, did not provide an address for S-F-.³ The cash that the petitioner sent S-F- while he was in jail and the letters the couple wrote one another during his incarceration are not evidence of a shared residence because S-F- was living in confinement; the couple was not living together. Moreover, S-F-'s letters were not mailed to the petitioner; they were mailed to the address of her immigration lawyer, and the fact that S-F- misspelled the petitioner's name detracts from their evidentiary value. Although the rent and utility bills name both individuals these documents do not, alone, establish the requisite joint residence.⁴ The identification card issued to S-F- does not establish that the couple resided together, as the document does not name the petitioner.

Nor does the relevant testimonial evidence of record establish the petitioner's alleged joint residence with her husband. Although the record contains generalized statements from the petitioner and several affiants that she and S-F- resided together, the statements lack probative information about the alleged shared residence. For example, neither the petitioner nor her affiants described the couple's apartment, their building, their furnishings, any jointly-owned belongings, their neighborhood, or any of their shared, residential routines.

³ In addition, the policy was issued on September 7, 2004, just two days before S-F- and the petitioner appeared before USCIS for an interview conducted in connection with the petitioner's permanent residency application.

⁴ The rent receipts were prepared on September 1, 2004, the week before the interview conducted in connection with the petitioner's permanent residency application.

Finally, we note that the petitioner has submitted conflicting information regarding the length of the alleged joint residence. As noted, she stated on the Form I-360 that she lived with S-F- from May 2003 until April 2005. However, in her March 25, 2008 letter, [REDACTED] an Adult Domestic Violence Counselor at the Houston Area Women's Shelter, stated that the petitioner told her that she and S-F- were living together in February 2008.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner resided with S-F-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In her April 22, 2008 self-affidavit, the petitioner stated that after their wedding, S-F- fought with her sons and mistreated them; abused drugs and alcohol; called her names; threatened her immigration status; made her perform sexual acts with which she was uncomfortable; was unfaithful; ridiculed her religious beliefs; and overdrew their bank account. She also stated that she became isolated from her friends.

In her March 1, 2010 self-affidavit, the petitioner reiterated her prior claims and added that S-F- criticized her; left the home for weeks at a time without calling; had sexual intercourse with her against her will; kept her from attending church; spoke to her children in a derogatory manner; and did not allow her to cook African food.

In her March 25, 2008 letter, [REDACTED] the petitioner's counselor, stated that the petitioner told her that S-F- abused drugs which led to a nine-month incarceration; was unfaithful; yelled at her and called her names; and stole money from her.

The petitioner also submitted affidavits from several acquaintances. [REDACTED] stated that the petitioner told him "unimaginable stories of pain, deprivation and intimidation that sent chills down [his] spine." [REDACTED] stated that he saw S-F- yelling at the petitioner; calling her names; and threatening her immigration status. [REDACTED] stated that the petitioner told her that S-F- abused drugs; extorted money from the petitioner and overdrew their bank account; and threatened her immigration status. [REDACTED] stated that the petitioner told her that S-F- was verbally abusive; was unfaithful; left the home for weeks at a time; abused drugs; and called her names. She also stated that the petitioner often sought shelter in her home. [REDACTED] stated that she saw the petitioner arguing with S-F- by telephone and, on another occasion, saw him speaking to the petitioner rudely. [REDACTED] stated that the petitioner told him that S-F- threatened to harm her; threatened her immigration status; overdrew their bank account; and ridiculed her religious faith. He also stated that he personally witnessed S-F- verbally abusing the petitioner when she tried to interfere with S-F-'s extramarital affairs. Finally, Pastor Laz Ude stated that the petitioner told him that S-F- verbally abused her and threatened her immigration status.

When considered in the aggregate, the relevant testimonial and evidentiary evidence fails to establish that S-F- subjected the petitioner or her sons to battery or extreme cruelty during their marriage. The

alleged sexual abuse was described in vague and generalized terms insufficient for a finding that the behavior constituted battery or extreme cruelty. Nor has the petitioner established that S-F-'s other behavior constituted extreme cruelty. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The description of the alleged verbal abuse lacked probative details describing specific incidents of abuse, and the other actions of S-F- described by the petitioner and her affiants are not comparable to types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Nor do the treatment notes from [REDACTED] establish that the petitioner was subjected to abuse, as the notes are unsigned and illegible.⁵

The petitioner failed to establish that she or her sons were subjected to battery or extreme cruelty perpetrated by S-F- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In her April 22, 2008 self-affidavit, the petitioner stated that she met S-F- at a restaurant after he finished playing with one of her sons. She also recounted that they took her sons to a park and S-F- played ball with them on their first date; that S-F- was nice to her, and that she saw S-F- as a good stepfather. She stated that S-F- proposed marriage "sometime in 2003," and that they married in May 2003.

However, the petitioner's testimony does not establish that she entered into marriage with S-F- in good faith, as she failed to provide probative details regarding her relationship with him. For example, although she stated that S-F- had been playing with one of her sons at the restaurant where they met and that they went to a park on their first date, she did not provide any probative information about the rest of their courtship. Nor did she provide any specific information about their engagement, their wedding, or other aspects of their relationship, apart from the alleged abuse. Nor does the other testimonial evidence of record establish that she entered into marriage with S-F- in good faith. Although the petitioner's affiants attested to the petitioner's good faith entry into the marriage in general terms, their testimony also lacked detailed, probative information regarding the couple's relationship.

Nor does the documentary evidence of record establish that the petitioner married S-F- in good faith. The record lacks evidence that both the petitioner and S-F- accessed and used the joint bank account. The automobile insurance policy was only effective for a 30-day period and was issued immediately before an immigration interview. Although the petitioner sent S-F- a total of \$150 between September 2003 and April 2004, some of the money was apparently refunded by the Texas Department of Criminal Justice in 2006, and the petitioner's name was spelled incorrectly on one of

⁵ In his August 5, 2010 decision, the director placed the petitioner on notice that [REDACTED] notes were unsigned and illegible. However, no evidence or explanation was submitted on appeal to cure either evidentiary deficiency.

the money orders. The evidentiary deficiencies regarding the letters the couple sent one another during S-F-'s incarceration were set forth previously, and they are not evidence of the petitioner's good faith entry into the marriage. Nor is the bail bond evidence of shared financial obligations: although the petitioner appears to have signed the bottom of this document, she is listed in neither the "Spouse" field of the document nor the notary field of the document as having actually signed it. The greeting card allegedly sent by S-F- to the petitioner speaks to his intentions, not those of the petitioner. Also, the fact the petitioner's name was misspelled on the card diminishes its evidentiary value. Nor do the photographs of the couple together establish the petitioner's good faith entry into the marriage, as they are only evidence that the petitioner and S-F- were together on several occasions. The rent and utility bills, alone, do not demonstrate shared financial obligations.

The petitioner has failed to establish that she married S-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that she failed to establish that she resided with S-F-; that S-F- subjected her or her sons to battery or extreme cruelty during their marriage; or that she married him in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her petition must remain denied.

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 sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.