U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 0 4 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-Petitioner: [redacted]

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

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director ("the 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by her lawful permanent resident husband. On appeal, the petitioner, through counsel, submits additional evidence and a brief.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 for a self-petition under section 204(a)(1)(B)(ii) of the Act 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 . . . lawful permanent resident spouse, must have been perpetrated

against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

Facts and Procedural History

The petitioner is a citizen of Nigeria who last entered the United States on November 11, 1987 as a B-2 nonimmigrant visitor. On March [redacted], the petitioner married W-D-[1], a U.S. citizen, in Texas. On September 5, 1991, W-D- filed an immigrant petition on the petitioner's behalf and she was subsequently granted conditional permanent resident status. On August [redacted], the petitioner and W-D- filed a joint petition to remove the conditions on residence. They divorced on April [redacted] On December 5, 1995, the petition was denied and the petitioner's conditional permanent resident status was terminated. On August [redacted] the petitioner married S-W-, a national of Nigeria and lawful permanent resident of the United States, in Texas. On July 6, 2011, the petitioner filed the instant Form I-360 self-petition. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's spouse did not subject her to battery or extreme cruelty, and counsel's claims and the evidence submitted on appeal fail to overcome this sole ground for denial. In her initial affidavit, the petitioner stated that she first met S-W- in Nigeria after

[1] Name withheld to protect the individual's identity.

graduating college. She recalled that after marrying and divorcing others, they married in the United States first before a judge in August 2001 and later in a church in October 2001, and after six years of marriage S-W "became the husband from hell," leaving his job, refusing a conjugal relationship, and ignoring her. The petitioner stated that they underwent church counseling but S-W- excessively drank, smoked and gambled and would go weeks without speaking to her. She recalled that he "bullied" her into stepping down from unspecified positions in the church and membership in unspecified cultural and professional organizations and he stopped assisting her when she was sick. The petitioner stated that before they married, she told S-W- she had a chronic debilitating disease, but after a few years of marriage he ignored her when she was sick, often left home and did not return her telephone calls, once insulted a friend for taking care of her, and when she recovered from surgery in a friend's home he did not call her for eight weeks. She recalled that when S-W- damaged his own credit she had to pay the bills herself, and when she tried to persuade him to better himself through education he resented her and accused her of trying to control him. The petitioner explained that they argued about money and the counsel given by church leaders who said she should be submissive.

The petitioner also submitted the affidavits of a pastor and three friends. stated that he has known the petitioner for 20 years and described many of her "laudable characteristics." Dr. did not, however, provide any evidence that the petitioner was battered or subjected to extreme cruelty by her husband. Rev. stated that he has known the petitioner since 2000 as a member of his Episcopal church where she came to him periodically for advice about her marriage to S-W-. Rev. relayed the petitioner's report to him that her husband was financially irresponsible, emotionally absent from the marriage, physically aggressive and not supportive during her 2007 illness. Rev. did not describe any acts that could be considered battery or extreme cruelty, or provide any details about the physical aggressive behavior of S-W- that he stated the petitioner reported to him.

recalled that she and the petitioner met in 2001, became close friends and she attended the church wedding of the petitioner and S-W-. She briefly stated that by February 2003, S-W- did not allow the petitioner to go out with friends. This statement is inconsistent with the petitioner's affidavit in which she stated that it was six years into her marriage before she had marital problems with S-W-. In addition, Ms. did not describe any examples of S-W- keeping the petitioner from friends, and the petitioner stated that she stayed in a friend's home for at least eight months of her marriage. Ms. recalled that S-W- did not drive the petitioner to work on his days off and claimed to have witnessed him push her during an argument, but she did not describe this pushing incident with any specificity. Ms. recalled the petitioner telling her in April 2009 that S-W- left the marital home, a claim that is inconsistent with the Form I-360 petition in which the petitioner stated that during the marriage, she and S-W- resided together until February 2010.

While representing the petitioner in her Form I-360 proceedings, Esq. submitted an affidavit in which he made assertions as her close friend of more than 20 years. Mr. recalled that when the petitioner disclosed her medical condition to S-W- before they married he was very supportive, but she later complained that he refused to engage in intimate relations with her. Mr. stated that he learned in the course of a 2006 request under the Freedom of Information Act (FOIA), that S-W- had been a U.S. lawful permanent resident throughout their marriage but had not told her. He recalled that his wife discussed with S-W- filing an immigrant visa petition for the

petitioner but he never did. Mr. claimed that in March 2008, S-W- sent the petitioner a greeting card expressing remorse for unspecified acts. He provided alleged quotes from the card, but did not submit a copy of the card for the record. When viewed in their totality, the petitioner's affidavit and those of a pastor and three friends reveal inconsistencies that diminish the petitioner's claim that t S-W- battered the petitioner, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted below a letter from , a counselor with the whom the petitioner began seeing five months after she filed her Form I-360 petition and more than three years after she indicated she last saw her husband. Ms. stated that the petitioner attended nine group counseling sessions from November 2011 through February 2012 during which she reported a number of behaviors by S-W- that the petitioner did not discuss in her affidavit. These include alleged claims made by the petitioner that S-W- cheated on her, and abused her sexually. Due to the lack of information in the petitioner's affidavit regarding the statements that the petitioner made to Ms. the director issued an RFE, noting that discrepancies in the record undermined her credibility.

In response, the petitioner submitted a second affidavit in which she provided examples of what she characterized as abusive behaviors by S-W. Neither in this affidavit nor in a separate statement did the petitioner discuss the discrepancies noted by the director in the RFE or discuss her testimony to Ms. about the sexual abuse. Rather the petitioner stated that she tested positive in February 2001 for the human immune deficiency virus (HIV) and when she told S-W- he was "speechless and looked shocked," which she believed in retrospect was because he infected her. She stated that by Christmas 2002, she was at an all-time-low, as S-W- caused her to be suicidal through his unspecified emotional abuse and intimidation. These statements, however, introduced new inconsistencies into the record, as in her first affidavit, the petitioner stated it was six years before she and S-W- began to have marital problems.

In this second affidavit, the petitioner further claimed that S-W- used her illness as a "means of control" by accusing her of infecting him with HIV, and that S-W- pushed her on three occasions, once while discussing her position as a church treasurer sometime in 2002, once while talking about a debt related to his brother's wedding in 2004, and once in November 2008 after S-W- lost his job. She recalled that S-W- played unspecified "mind games" by withholding information about fathering a child in Nigeria as well as his immigration status and history in the United States. The petitioner did not, however, describe any of the alleged incidents in probative detail.

The petitioner claimed that in 2002, S-W- began restricting her friendships, associations and ability to attend functions. The petitioner provided no probative information concerning these restrictions and her first affidavit and those of others indicated that she worked full-time as a pharmacist, was active in her church, and enjoyed a number of close friendships throughout her marriage to S-W-. The petitioner's statement is additionally inconsistent with her first affidavit in which she stated that it was not until six years of marriage that she and S-W- had problems.

The petitioner stated that in 2008, S-W- got a job in Texas where he resided with her cousin rent-free. She stated that throughout 2009, S-W- never returned to their marital home and they never resided together again. These statements are inconsistent with the Form I-360 self-petition on which the petitioner asserted that she and S-W- resided together until February 2010. The statements are also inconsistent with Ms. affidavit in which she stated that the petitioner told her in April 2009 that S-W- left the marital home.

As noted the denial decision, a number of discrepancies in the evidence of record remained unaddressed and unexplained after the petitioner responded the RFE, as the petitioner made several statements that were internally inconsistent, inconsistent between her first and second affidavits, and inconsistent with statements by other affiants.

On appeal, the petitioner submits a third affidavit in which she states that she has not made any inconsistent statements. The petitioner does not address in her third affidavit any of the discrepancies identified by the director. Rather, the petitioner adds to her prior affidavits that S-W- would publically praise her as the best wife but then ignore her at home, give her "a deadly look" to control her movement in the home, use the biblical and cultural right as head of household to control her freedom, and once kept her cellular telephone from her when she was in the hospital. The petitioner describes as humiliating being sick and in need of assistance yet unattended to by her husband. She adds that during a birthday party in 2004, S-W- "humiliated" her by not speaking with her or socializing with others, knowing this would cause her to be the subject of scrutiny. The petitioner also states that although S-W- would deny her intimacy he would also take advantage of her while she slept, forcing her to have sex with him. The petitioner does not provide any further information about this forced intimacy.

Counsel asserts that the petitioner "clearly explained any alleged inconsistencies in the record," and that the petitioner's inability to share her suffering in its entirety is rooted in her Nigerian cultural background. We acknowledge the petitioner's religious and cultural background; however, she has not explained the noted inconsistencies among her own affidavits, those of her friends and a pastor, and the letter from Ms. The unresolved discrepancies detract from the petitioner's credibility. The preponderance of the relevant evidence does not establish that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner was subjected to battery or extreme cruelty by her husband. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act on this ground.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not

been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons.

ORDER: The appeal is dismissed.