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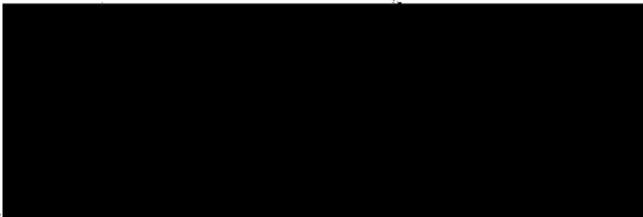
EAC 04 118 54019

Office: VERMONT SERVICE CENTER

Date: OCT 06 2006

IN RE:

Petitioner:



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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (Director), Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as an immigrant pursuant to 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, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse, that he is a person of good moral character, and that he entered their marriage in good faith.

The petitioner submitted a timely appeal.¹

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 the alien's child 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 . . . , 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 . . . 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 or 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 of the community.

¹ Although the petitioner was previously represented by [REDACTED] on May 19, 2006, Mr. Banwo submitted a letter indicating the withdrawal of his representation of the petitioner.

* * *

(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 under section 204(a)(1)(A)(iii) of the Act are contained 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.

(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 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. 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.

* * *

(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 petitioner in this case is a native and citizen of Nigeria who entered the United States on September 7, 2000 as an F-1 nonimmigrant student. On November 20, 2001, the petitioner married L-C,² a United States citizen. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on March 31, 2003. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 petition and the Form I-485 application were denied on October 10, 2003 based upon the petitioner's and his spouse's failure to attend an interview before the Service. On March 11, 2004, the petitioner filed this Form I-360. On December 30, 2004, the director requested further evidence regarding the petitioner's good moral character and good faith marriage. Additionally, the director requested the petitioner to indicate whether he was still married to his spouse. The petitioner submitted additional evidence on February 28, 2005, but also indicated that further evidence would be submitted "as soon as possible." On June 28, 2005 the director notified the petitioner that he had 60 additional days in which to present additional evidence. On August 29, 2005, the petitioner, through counsel, again requested additional time to respond to the director's request. The request for additional time was granted by the director on September 30, 2005. However, as no further evidence was submitted, the director denied the petition on February 14, 2006, finding that the record failed to establish that the petitioner had been battered by or subjected to extreme cruelty by his spouse, that he is a person of good moral character and that he entered into the marriage in good faith. The petitioner timely appealed.

On appeal, the petitioner claims that "there has been a mix up in characters as well as information" and that he would "send out all necessary documents that have not been received." To date, no further evidence has been received. Upon review, we concur with the director's conclusion and find that the evidence submitted on appeal does not fully overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Battery or Extreme Cruelty

As evidence to support his claim of abuse, with the initial filing, the petitioner submitted a personal statement and affidavits from two friends [REDACTED] and [REDACTED]. In his statement, the petitioner claims that his spouse was involved in an abusive relationship with her previous boyfriend and that he was also involved in numerous incidents with the boyfriend. We note that to be eligible for classification, the statute requires the petitioner to establish that the abuse was perpetrated by the petitioner's spouse against the petitioner. Violence on the part of a third-party against the petitioner does not support the petitioner's claim that he was abused by his spouse. Accordingly, the petitioner's and his friend's claims regarding the behavior of the petitioner's ex-boyfriend against the petitioner or against the petitioner's spouse is not sufficient to establish that the petitioner was a victim of abuse *perpetrated by his spouse*. While the petitioner and his friends also claim that the petitioner's spouse began to take money from his bank account, that she caused his "financial problems," and the loss of his job, and that she was having an affair with her ex-boyfriend, such allegations are not sufficient to establish that the petitioner was threatened, forcefully detained, psychologically or sexually abused or exploited

² Name withheld to protect individual's identity.

or that his spouse's actions were part of an overall pattern of violence. Although the petitioner and his friends also claim that his spouse would become "violent," and would hit him, none of the statements contain a description of any specific event or incident. Accordingly, the statements do not carry sufficient weight to establish the petitioner's claim of abuse.

Despite the deficiency in the petitioner's evidence, the director failed to request any further evidence regarding the petitioner's claim of abuse, and denied the petition, in part, finding that the record did not contain "satisfactory evidence" to demonstrate the petitioner's claim of abuse.³ As the case is already being remanded due to the director's failure to issue a NOID to the petitioner, the petitioner should be afforded the opportunity to present additional evidence to establish his claim of abuse.

Good Moral Character

The police clearances initially submitted by the petitioner indicated that the petitioner was involved in the following driving related offenses and incidents of damage to property and assault in the third degree:

- March 9, 2002, Operating Vehicle During Rev/Susp
- September 14, 2002, Failure to Appear – Citation – Misdemeanor
- October 15, 2002, Operating Vehicle During Rev/Susp
- November 20, 2002, Failure to Appear – Citation – Misdemeanor
- July 12, 2003, Operating Vehicle During Rev/Susp
- October 31, 2003, Assault 3rd degree and Damage to Property

In his request for evidence, the director specifically requested copies of all of the police reports and court documents for each incident or arrest noted in the police clearances, as well as a statement from the petitioner describing each arrest and the situation or circumstances surrounding each arrest.

In response to the director's request, the petitioner submitted copies of the following police reports:

- October 26, 2001 accident report regarding an accident in which the petitioner and her ex-boyfriend were involved with a third-party.

³ In addition to failing to providing the petitioner an opportunity to present additional evidence regarding his claim of abuse prior to denial, the director failed to discuss all of the evidence submitted pertaining to this claim. Specifically, the director failed to evaluate the petitioner's statements and the statements made by his friends. However, as discussed above, upon our review of the petitioner's evidence, we find the petitioner's evidence regarding his claim of abuse to be insufficient.

- October 31, 2001 report regarding an assault on the petitioner's spouse by her ex-boyfriend.
- February 3, 2002 report regarding charges against the petitioner's ex-boyfriend due to his false missing person report.
- March 9, 2002 report related to petitioner's arrest for willful, reckless driving, driving on a suspended license, and colliding with a fixed object. This report also indicates that the petitioner's ex-boyfriend was also for arrested reckless driving.
- August 13, 2002 report regarding an assault on the petitioner's spouse by her ex-boyfriend.
- October 15, 2002 report regarding the petitioner's arrest for driving on a suspended license, speeding, and no proof of insurance.
- An undated missing person report filed on the petitioner's spouse by her ex-boyfriend.

While the petitioner submitted information related to two of the incidents noted in the police clearances, the remainder of the documents relate to the petitioner's spouse's ex-boyfriend, not the petitioner. Specifically, the petitioner failed to submit any information related to the incidents that occurred on September 14, 2002, November 20, 2002, July 12, 2003, and October 31, 2003.⁴ In addition to his failure to submit police reports and court documents related to all of his arrests, the petitioner also failed to submit a statement regarding his arrests. Accordingly, we concur with the director's finding that the record did not establish that the petitioner is a person of good moral character.

Good Faith Marriage

The petitioner submitted the following evidence relevant to his claim that he married his spouse in good faith: his personal statement, a check from State Farm insurance, a lease, several photographs, and two greeting cards.

The petitioner states that he met his spouse at work and that they "courted for 4 months." The petitioner indicates that when they decided to get married, it was his spouse who actually proposed to him. [REDACTED] indicates that the petitioner married his spouse a few months after [REDACTED] met the petitioner. [REDACTED] not provide any further details about the petitioner's alleged good faith in marrying his spouse and does not describe any particular incidents where she witnessed the alleged bona fides of their marital relationship. Similarly, [REDACTED] bokwe states that he briefly lost contact with the petitioner and when they eventually met again, the petitioner was already married. [REDACTED] provides no probative information about the petitioner's marriage to his spouse.

⁴ The documentation submitted regarding the October 31, 2001 incident relates to the petitioner's ex-boyfriend not the petitioner. The petitioner failed to submit pages 3 and 4 of the four-page report. The record does not contain any documentation to establish the outcome of the petitioner's arrest on this date for damage to property and assault in the 3rd degree.

The check from State Farm appears to be from a settlement related to a car accident in which the petitioner and her spouse were involved. The fact that the petitioner received this money as part of an insurance settlement is not evidence of a good faith marriage. It is noted in addition to the petitioner and his spouse, the check was also issued to their attorney and medical providers.

The lease submitted by the petitioner was signed by the petitioner and his spouse on January 3, 2003 for the period covering January 2003 through December 2003. Given the petitioner's indication that he and his spouse separated in October 2002, the lease carries little evidentiary weight in establishing the petitioner's good faith marriage.

The photographs submitted by the petitioner while evidence that the petitioner and his spouse were together at a particular place and time provide no evidence regarding the petitioner's intent at the time of his marriage. It is noted that despite a claimed relationship of at least two years, all of the petitioner's photographs appear to have been taken on a single day.

The two greeting cards submitted by the petitioner appear to have been given to the petitioner by his spouse. The cards do not contain a date or any other indication as to why or when they were given to the petitioner. Regardless, the letters are from the petitioner's spouse and thus have little probative value in establishing that the petitioner's feelings or emotions or that he entered into his marriage in good faith.

Pursuant to the above discussion, the present record does not demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

Although the director's decision was based upon the single issue addressed above, we find additional issues beyond the director's decision that must be addressed on remand. First, in his response to the director's RFE, the petitioner indicated that he was no longer married. Although counsel indicated that documents related to the petitioner's divorce would be forthcoming, nothing further was submitted. On remand, the petitioner should be afforded the opportunity to submit documentation related to his divorce and to establish that the legal termination of his marriage was connected to his former wife's battering or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.⁵

Second, we find insufficient, inconsistent, and contradictory evidence regarding the petitioner's residence with his spouse. On the Form I-360, the petitioner indicated that he resided with his spouse from November 2001

⁵ An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past two years and also demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse.

until October 2002. The petitioner indicated that their shared residence was located at [REDACTED]. While the record demonstrates the petitioner's residence at this address, the record does not contain any evidence of the spouse's residence here. As previously discussed, the only documentary evidence of their shared address consists of a lease dated January 3, 2003, after the period of time in which the petitioner indicated he lived with his spouse.

Further, the record contains information which indicates that the petitioner's spouse continued to reside with her ex-boyfriend at [REDACTED] during the period of time in which the petitioner claims to have been residing with his spouse. The police report regarding a motor vehicle accident dated December 26, 2001, one month after the petitioner's marriage, indicates that the petitioner's spouse was in the car with her ex-boyfriend and lists both of their addresses at [REDACTED]. A second police report, dated August 13, 2002 also lists the petitioner's spouse's address at [REDACTED]. While the record also contains evidence of the petitioner's jointly filed 2001 and 2002 federal income tax returns which indicate a shared residence at [REDACTED], the petitioner's spouse's 2001 W-2 forms indicate her marital status as "single" and her address as [REDACTED]. Although the petitioner and her spouse had been married for approximately two months before the end of the 2001 tax year, such evidence suggests that the petitioner's spouse failed to inform her employer that she was married and that she failed to update her address. The lack of documentation of a shared address combined with the contradictory evidence related to the petitioner's spouse's residence casts doubt on the petitioner's claim that he resided with his spouse as claimed. Further, such inconsistencies also cast doubt on the petitioner's claim of a good faith marriage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

⁶ The documents were submitted in support of the previously denied Form I-130 petition.