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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 10 2007
EAC 05 102 52398

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:

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.

Mauro Deadrick
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 because the petitioner did not establish that he married his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits additional evidence.

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 facts and procedural history. The petitioner is a native and citizen of Nigeria who entered the United States on February 22, 1997 as a nonimmigrant visitor (B-2). On February 28, 2003, the petitioner married T-D-¹ an alleged U.S. citizen, in California. The

¹ Name withheld to protect individual's identity.

petitioner filed this Form I-360 on February 25, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into marriage with his wife. The petitioner timely responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty and good-faith entry into the marriage. The petitioner timely responded to the NOID with additional evidence. The director denied the petition on September 25, 2006 for lack of the requisite battery or extreme cruelty and good-faith entry into the marriage.

On appeal, the petitioner claims that the evidence submitted below and on appeal establishes his eligibility. We concur with the director's determinations. The petitioner's claims and the evidence submitted on appeal fail to overcome the grounds for denial. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with his wife and was eligible for immediate relative classification based on such a relationship.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with his wife:

- The petitioner's June 30, 2004 declaration; April 26, 2005 affidavit and August 31, 2006 letter submitted below and his October 17, 2006 letter submitted on appeal;
- The June 29, 2004 letter submitted below and the October 8, 2006 declaration submitted on appeal of the petitioner's uncle, [REDACTED]; and
- Copies of automobile insurance policy certificates effective November 21, 2003 to July 21, 2005, which list the petitioner and his wife as the insured parties.

In his June 30, 2004 declaration, the petitioner states that his "marriage was all right for the first few months." In his April 26, 2005 affidavit, the petitioner states that he married his wife in good faith and that they had marital problems which they unsuccessfully tried to resolve through counseling. In his August 31, 2006 letter, the petitioner reiterates, "I entered into this marriage in good faith; out of love." The petitioner states, "She would cook at times and do my laundry. I thought about that and wanted to make it work and so I stayed a little while longer." The petitioner does not describe how or when he met his wife, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

In his June 29, 2004 letter, [REDACTED] states that the petitioner came to him for advice about his marital problems sometime around November 2003. In his October 8, 2006 declaration, [REDACTED] explains, "I know they had been married for sometime prior to when he came to me with his problems and thought they were O.K." [REDACTED] does not indicate that he was aware of the former couple's courtship, spoke to the petitioner and observed his behavior during the courtship, attended the former couple's wedding, or interacted with them at any point before the petitioner confided in him about his marital problems.

Apart from the automobile insurance policy certificates, the petitioner submitted no other documentary or testimonial evidence of his allegedly good-faith entry into marriage with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's RFE and NOID. In his October 17, 2006 letter submitted on appeal, the petitioner reviews the relevant evidence he submitted below and states, "I would have sent pictures but it just happens that I'm not big on pictures, didn't care to save any pictures of us when I left the abusive environment because I didn't want any reminder of that mess I was in." Although he is not required to do so, the petitioner does not explain why other evidence, apart from photographs, does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner provides no detailed description of how he met his wife, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. [REDACTED] attests that the petitioner sought his guidance for marital problems, but does not provide any probative testimony regarding the petitioner's allegedly good-faith entry into the marriage. The joint automobile insurance policy certificates alone are insufficient to establish the petitioner's claim. Accordingly, the record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's June 30, 2004 declaration; April 26, 2005 affidavit and August 31, 2006 letter submitted below and his October 17, 2006 letter submitted on appeal;
- The June 29, 2004 letter submitted below and the October 8, 2006 declaration submitted on appeal of the petitioner's uncle, [REDACTED]; and
- The August 17, 2004 declaration of the petitioner's friend, [REDACTED]

In his June 30, 2004 declaration, the petitioner states that a few months after their wedding, his wife began drinking heavily, she lost her job, and he noticed money disappearing from his wallet. The petitioner reports that he once gave his wife \$200 for groceries, but she did not buy them. The petitioner states that his wife took his leather jackets and shoes and that his television, stereo and car stereo were stolen. The petitioner explains that his wife's relatives told him that she was using controlled substances. The petitioner states that his wife would purposely play music unbearably loud at night so he could not study at home and he would have to go to a parking lot to study. In January 2004, the petitioner reports that his wife had intimate relations with another man in the former couple's home when the petitioner was present. The petitioner states, "This was going to happen a second time so I decided to call the police, and he left." After this incident, the petitioner states that he left the former couple's home when his wife's boyfriend began threatening him.

In his April 26, 2005 affidavit, the petitioner states, "She has put me through intense psychological abuse. Most of these abuses were carried out in a drunken state. . . . It became so unbearable I began to spend less time at home. I did not make a police complaint because I did not want anything on my record."

In his August 31, 2006 letter, the petitioner explains, "In the culture I was raised [sic] we were taught to deal with domestic issues domestically and not run to a third party to resolve issues and so I left the police and psychologists out of this." The petitioner states that his wife would call him "an idiot and stupid" at least seven times a day and say that he had no common sense. The petitioner explains that his wife always thought he was "chasing girls" and would "get into a screaming fit" if he studied at the library, so he had to study at home, but would have to leave to study in the parking lot when she played her music too loudly. The petitioner reports that during his marriage, he "was high strung and stressed all the time" and lost a lot of weight.

On appeal, the petitioner states, regarding the alleged abuse, "I at the time thought it was all part of marriage and saw no need to take pictures of my injuries from our fights or document the abuse." However, in his testimony submitted below, the petitioner does not state that his wife ever physically assaulted him and he does not describe any specific incidents of battery on appeal.

In his June 29, 2004 letter, [REDACTED] states that around November 2003, the petitioner told him that the petitioner's wife had problems with alcohol and drugs and was verbally and emotionally abusive. Mr. Iredia advised the petitioner to seek counseling with his wife, but reports that the petitioner's wife did not attend several appointments that he made for the former couple. In his October 8, 2006 letter submitted on appeal, [REDACTED] states that the petitioner told him that his wife constantly yelled at him and called him stupid and that one night the petitioner came home to find raw eggs thrown on the walls of their room. The petitioner himself does not describe this incident in any of his statements. [REDACTED]

[REDACTED] further states, "Repeated cycles of outbursts of anger that results in physical confrontations and fights followed by apologies only to be repeated again and again, is symptomatic of abuse." However, [REDACTED] does not explain how this cycle of abuse specifically relates to the petitioner's situation. [REDACTED]

[REDACTED] does not describe any particular incidents of abuse in detail that he either witnessed or that the petitioner discussed with him.

[REDACTED] states that she met the petitioner "last fall when he was having problems with his wife [T-D-]. He told me about her drinking and drug problems and the mental abuse she was giving him. . . . I helped him find a place when things got bad and he needed to move." [REDACTED] does not indicate that she witnessed any abuse and she does not describe the effects of any alleged abuse that she observed in the petitioner.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and in the RFE and NOID. The petitioner's explanation of his failure to do so is inconsistent with other parts of his testimony. In his August 31, 2006 letter, the petitioner states that in his culture, domestic problems were resolved within the family and so he never called the police.

However, in his June 30, 2004 letter, the petitioner states that he called the police after he discovered his wife's infidelity. On appeal, the petitioner explains that he never thought to document his wife's abuse because he thought their fights were part of marriage. Yet in all of his statements submitted below the petitioner refers to his wife's extreme cruelty and psychological abuse and does not indicate that she ever physically assaulted him.

The testimony of the petitioner, [REDACTED] and [REDACTED] fails to establish that the petitioner's wife subjected him to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

Beyond the director's decision, the petitioner also failed to demonstrate that he had a qualifying relationship with his wife, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) prescribes, in pertinent part:

Relationship. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities[.]

The record fails to establish both that the petitioner's wife is a U.S. citizen and that their marriage was registered with civil authorities. As proof of his marriage to a U.S. citizen, the petitioner submitted a copy of a California "License and Certificate of Confidential Marriage." The document states that the petitioner and his wife were married on February 28, 2003 in Los Angeles. Although the document was signed by the reverend who solemnized the marriage, the space captioned, "Date accepted for registration" is blank. In addition, the bottom portion of the document contains an affidavit signed by both the petitioner and his wife, which states, "This affidavit must be signed and returned to the county clerk who may detach and discard it before registration and filing of the certificate." This notation and the lack of a date that the document was accepted for registration indicates that the petitioner's marriage was never actually registered with county clerk or other, appropriate civil authority.

Apart from the notation on the petitioner's marriage certificate that his wife was born in Illinois, the record contains no evidence that the petitioner's wife is a U.S. citizen. The regulation at 8 C.F.R. § 204.1(g)(3) states, in pertinent part:

If a self-petitioner filing under section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, [Citizenship and Immigration Services (CIS)] will attempt to electronically verify the abuser's citizenship . . . from information contained in [CIS] computerized records. Other [CIS] records may also be reviewed at the discretion of the adjudicating officer. If [CIS] is unable to identify a record as relating to the

abuser or the record does not establish the abuser's . . . citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

The petitioner provided no explanation for his failure to submit primary or other secondary evidence of his wife's U.S. citizenship, apart from their marriage certificate. A review of CIS records has also failed to establish that the petitioner's wife is a U.S. citizen.

The evidence does not establish that the petitioner's marriage was registered with civil authorities and that his wife is a U.S. citizen. Accordingly, the petitioner has not demonstrated that he had a qualifying relationship with his wife, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner also failed to establish that he was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As discussed in the preceding section, the petitioner failed to establish that he had a qualifying relationship with a U.S. citizen. Accordingly, the petitioner has also not demonstrated that he was eligible for immediate relative classification based on such a relationship.

The petitioner has not established that he had a qualifying relationship with his wife, that he was eligible for immediate relative classification based on such a relationship, that he entered into marriage with his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.