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U.S. Citizenship
and Immigration
Services

B9

[Redacted]

FILE: [Redacted]
EAC 06 255 50018

Office: VERMONT SERVICE CENTER

Date: MAY 29 2007

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

PUBLIC COPY

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.

Laura Deednick
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 entered into marriage with his wife in good faith, that his wife subjected him or either of his children to battery or extreme cruelty during their marriage, and that he resided with his wife.

On appeal, the petitioner submits a letter and 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:

(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 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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who entered the United States on April 13, 2002 as a nonimmigrant visitor (B-2). On October 21, 2002, the petitioner married M-A¹, a U.S. citizen, in New York. On July 28, 2006, the petitioner was served with a Notice to Appear for removal proceedings, charging him with remaining in the United States beyond his period of authorized stay. The petitioner remains in proceedings before the New York Immigration Court and his next hearing is scheduled for July 12, 2007.

The petitioner filed this Form I-360 on September 11, 2006. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty, joint residence and good moral character. The petitioner responded to the NOID with additional evidence that established his good moral character, but did not satisfy the other requirements cited in the NOID. Accordingly, the director denied the petition on December 1, 2006 and the petitioner timely appealed.

Good-Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's entry into the marriage in allegedly good faith:

- The petitioner's undated statement submitted with the Form I-360, his October 9, 2006 affidavit and his December 28, 2007 letter submitted on appeal;
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED];
- Letter of the petitioner's relative, [REDACTED];
- October 9, 2006 affidavit of the petitioner's cousin, [REDACTED] submitted below;
- Affidavit of [REDACTED] submitted on appeal;
- Photographs of the petitioner, his wife and his sons;
- Cable television bill for July 2006 that is jointly addressed to the petitioner and his wife;²
- Telephone bill dated June 18, 2006 that is jointly addressed to the petitioner and his wife;
- Copy of the petitioner's 2005 federal income tax return;

¹ Name withheld to protect individual's identity.

² The petitioner submitted a second cable television bill dated October 15, 2006. However, as noted by the director, the bill is dated nearly two months after the petitioner states that he ceased residing with his wife.

- Premium payment slip dated September 7, 2006 for a life insurance policy held by the petitioner for his wife submitted below and copies of the petitioner's application for the policy and additional coverage, signed by the petitioner on October 25, 2005 and submitted on appeal; and
- Joint bank account statements for the petitioner and his wife dated October 16 to November 15, 2004; August 13 to September 15, 2005 and November 15 to December 14, 2006.

The petitioner's statements and those of his children, friends and relatives provide scant information about how the petitioner met his wife, their courtship, wedding, joint residence and any of their shared experiences, apart from the alleged abuse. In his first statement, the petitioner simply reports that he and his wife married in New York and lived together as husband and wife. In his October 9, 2006 affidavit, the petitioner states that he knew his wife in Nigeria where they previously dated, that he lived with her at two residences in New York and that "During the time of our relationship our relationship [sic] was re-ignited [sic], I eventually proposed to her and we married on, 10/21/2002 in Brooklyn, New York." The petitioner provides no further details.

The testimony of the petitioner's friends and relatives also fails to establish his claim. As noted by the director, the substantive portions of the affidavits of [REDACTED] and [REDACTED] are identical. This verbatim repetition indicates that the language of the affidavits is not the authors' own and greatly detracts from their probative value. In addition, these affiants merely state that they have attended "a number of social events with the couple and family in numerous occasions" and offer no further details. [REDACTED] confirms that the petitioner married his wife and they lived together with the petitioner's sons, but [REDACTED] also fails to provide probative information regarding the petitioner's intentions in entering the marriage. [REDACTED] states that he knew of the petitioner's relationship with his wife in Nigeria, which "continued and blossomed into marriage in [the] United States," but [REDACTED] does not explain the basis of his knowledge and he provides no further details. [REDACTED] states that he witnessed the petitioner's marriage to his wife, that the petitioner's wife introduced his sons as their children and that [REDACTED] visited the family on unspecified occasions at their residences. [REDACTED] does not, however, provide probative details regarding the petitioner's allegedly good-faith entry into the marriage.

The remaining documentary evidence is insufficient to establish the petitioner's claim. The director addressed the insufficiency of the photographs, cable and telephone bills and insurance documents submitted below and we do not repeat his discussion here. The director also noted that the petitioner's 2005 federal income tax return was filed as head of household and indicated that the petitioner did not reside or share tax liabilities with his wife for the majority of that year. On appeal, the petitioner states that he filed his 2005 return relying "on the knowledge of a tax expert." However, the petitioner also states that he received employment authorization "in 2003/2004." The petitioner does not explain why he did not jointly file taxes with his wife in 2003 or 2004 and he fails to coherently explain his individual filing status in 2005.

On the Form I-360, the petitioner states that he lived with his wife from April 13, 2002 until August 29, 2006. On appeal, the petitioner further states, "We are still working towards reconciliation and our

family in Nigeria has intervened.” Yet despite the over four-year long duration of the petitioner’s marriage at the time of filing, the petitioner submitted just one cable bill and one telephone bill jointly addressed to him and his wife. On appeal, he submits a single, monthly joint bank statement for 2004, 2005 and 2006. The petitioner submitted no documents such as cancelled checks or deposit slips to show that both he and his wife used the account during these years. Moreover, despite the petitioner’s application forms for a life insurance policy for his wife and additional coverage on the policy, the petitioner submitted no evidence that the policy was actually issued and that he continued to pay the scheduled premiums. To the contrary, the petitioner submitted a copy of a blank payment slip for the premium on his wife’s policy with a due date of September 7, 2006. The slip states that the right-hand side of the slip should be returned with the premium payment. The petitioner submitted the full slip on October 23, 2006, over a month after the premium payment was due, which indicates that the petitioner did not make the payment. The record contains no other evidence that the policy of the petitioner’s wife was actually issued and maintained.

The single cable bill, single telephone bill and three bank account statements are all jointly addressed to the petitioner and his wife. However, these five documents fail to establish the petitioner’s claim and do not overcome the lack of any detailed, probative testimony regarding how the petitioner met his wife, their relationship in Nigeria, their reunification in the United States, their marriage, joint residence and any of their shared experiences, apart from the alleged abuse. Accordingly, the petitioner has not established that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner’s claim that he resided with his wife:

- The petitioner’s initial, undated statement, his October 9, 2006 affidavit, his October 21, 2006 letter and his December 28, 2007 letter submitted on appeal;
- Affidavit of the petitioner’s friends, [REDACTED] and [REDACTED];
- Letter of the petitioner’s relative, [REDACTED];
- Affidavit of the petitioner’s cousin, [REDACTED] submitted below and [REDACTED]’s December 29, 2006 affidavit submitted on appeal;
- Affidavit of [REDACTED], submitted on appeal;
- The petitioner’s marriage certificate stating the same residential address for him and his wife;
- New York City Public Schools Verifications of Pupil Registration for the petitioner’s sons, [REDACTED] and [REDACTED];
- Cable television bill for July 2006 that is jointly addressed to the petitioner and his wife;
- Telephone bill dated June 18, 2006 that is jointly addressed to the petitioner and his wife;
- Copy of the petitioner’s 2005 federal income tax return;

- Premium payment slip dated September 7, 2006 for a life insurance policy held by the petitioner for his wife submitted below and copies of the petitioner's application for the policy and additional coverage, signed by the petitioner on October 25, 2005 and submitted on appeal; and
- Joint bank account statements for the petitioner and his wife dated October 16 to November 15, 2004; August 13 to September 15, 2005 and November 15 to December 14, 2006 submitted on appeal.

The director determined that the evidence submitted below did not establish that the petitioner resided with his wife. We do not repeat his discussion here. On appeal, the petitioner submits an additional affidavit from [REDACTED] in an attempt to clarify a discrepancy noted by the director regarding the address of the petitioner's son, [REDACTED] as reported on the April 27, 2006 New York City Public Schools Verification of Pupil Registration. In his affidavit submitted below, [REDACTED] stated that due to the threats of the petitioner's wife against the petitioner and his sons, the petitioner decided to temporarily change their contact address to [REDACTED]'s residence. [REDACTED] explains that after the family crisis was settled, the petitioner and his sons remained at their previous residence. However, in his October 21, 2006 letter, the petitioner states that due to the arguments between his wife and his son, [REDACTED] during this period, he decided that [REDACTED] should leave their home and stay with [REDACTED] temporarily. Yet, the school documents indicate that [REDACTED] not [REDACTED] was the son that stayed with [REDACTED]

On appeal, [REDACTED] states, "That I mistakenly acknowledge due to typographical error that it was [REDACTED] when I supposed to say it was [REDACTED] that temporarily lived with me." However, Mr. [REDACTED] never stated that [REDACTED] lived with him in his first affidavit. Rather, he stated that the petitioner changed his address and the address of both of his sons to [REDACTED] residence. On appeal, [REDACTED] now states that [REDACTED] temporarily lived with him. On appeal, the petitioner claims that Mr. [REDACTED] acknowledgement of his mistake resolves the discrepancy. Yet [REDACTED]'s appellate affidavit attempts to correct a statement that he never made in his first affidavit. Moreover, on appeal, the petitioner does not acknowledge that he himself stated below that [REDACTED] not [REDACTED] temporarily lived with [REDACTED]. The petitioner also does not explain why, in his first affidavit, [REDACTED] stated that the petitioner changed both his address and that of his sons to [REDACTED] residence. Consequently, the petitioner has failed to resolve the discrepancy on appeal.

Regardless of the discrepancy concerning the petitioner's residence with his wife on or about April 2006, the remaining relevant evidence submitted on appeal fails to establish that the petitioner resided with his wife prior to that time. On the Form I-360, the petitioner states that he resided with his wife from April 13, 2002 until August 29, 2006. On appeal, the petitioner submits one monthly bank statement for a joint account from 2004, 2005 and 2006 and his application for a life insurance policy and additional coverage for his wife, signed by the petitioner on October 25, 2005. However, as discussed in the preceding section, the record contains no evidence that this insurance policy was ever issued or maintained. The 2005 and 2006 bank statements do not outweigh the petitioner's 2005 income tax return filed individually as head of household and the unresolved discrepancy regarding the petitioner's alleged residence with his wife on or about April 2006. The remaining, single bank

statement from 2004 and the petitioner's marriage certificate are insufficient to establish that the petitioner resided with his wife. Accordingly, the record fails to establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his wife battered or subjected him or his children to extreme cruelty during their marriage:

- The petitioner's initial, undated statement and his October 9, 2006 affidavit;
- Affidavits of the petitioner's sons, [REDACTED] and [REDACTED];
- Affidavit of the petitioner's friends, [REDACTED] and [REDACTED];
- Letter of the petitioner's relative, [REDACTED];
- Affidavit of the petitioner's cousin, [REDACTED], submitted below and [REDACTED] December 29, 2006 affidavit submitted on appeal;
- Affidavit of [REDACTED], submitted on appeal;
- The petitioner's Family Offense Petition filed against his wife and dated August 29, 2006;
- Temporary Order of Protection issued for the petitioner against his wife and effective from September 28, 2006 to November 2, 2006; and
- Summons for the petitioner's wife to appear for a hearing on the petitioner's family offense case on November 2, 2006.

In his first, undated statement, the petitioner reports that in December 2004, his wife threatened that she would not attend the interview for the adjustment of status cases for the petitioner and his sons if they did not revert back to Islam. In 2006, the petitioner states that his wife did not attend his and his sons' removal hearings because they did not revert back to Islam. On August 28, 2006, the petitioner reports that his wife became intoxicated, physically attacked him, assaulted his son, [REDACTED] and that she "always threatened to call law enforce [sic]" after the petitioner obtained a temporary order of protection against her. In his October 9, 2006 affidavit, the petitioner states that his wife would grab him and slam him against the door if he asked about her drinking and staying out at night. He reports that his wife often called him a derogatory name and when he told her not to, she threw her bag, slapped his face and threatened to report him and his children for deportation.

The relevant portions of the affidavits of the petitioner's sons are nearly identical. Paragraphs six and seven of their affidavits also repeat nearly verbatim paragraphs nine and ten of the petitioner's October 9, 2006 affidavit. The substantive portions of the affidavits of [REDACTED] and [REDACTED] are also identical. These verbatim repetitions indicate that the language of the affidavits is not the authors' own and greatly detracts from the probative value of the affidavits.

The remaining affidavits also fail to support the petitioner's claim. [REDACTED] simply states that he or she was aware of the petitioner's "marital problems." [REDACTED] states that he or she once saw the petitioner and his wife quarrelling and that the petitioner's wife threatened "to surprise them"

and called the petitioner a derogatory name. Neither [REDACTED] or [REDACTED] provides any further, probative details.

In his October 9, 2006 affidavit, [REDACTED] states that on one occasion he heard the petitioner's wife call the petitioner a derogatory name and that the petitioner's sons would cry when the petitioner's wife threatened to have them deported. As discussed in the preceding section, [REDACTED] states that the petitioner and his sons temporarily changed their address to his residence due to the threats of the petitioner's wife, but states on appeal that only [REDACTED] temporarily stayed with him. [REDACTED] testimony regarding this alleged consequence of the threats of the petitioner's wife is not credible given the aforementioned, unresolved discrepancy between his and the petitioner's statements and the school record of the petitioner's son, [REDACTED].

The temporary order of protection was granted ex parte, indicating that the court's judgment was based solely on the petitioner's testimony. In the NOID, the director requested the petitioner to submit documentation of the outcome of the hearing referenced in the summons issued to the petitioner's wife. However, the director mistakenly referred to the hearing as occurring on September 28, 2006. Although the summons is dated September 28, 2006, it states that the petitioner's wife is summoned to appear in court on November 2, 2006 to answer the petitioner's family offense petition. The petitioner responded to the NOID on October 23, 2006, before this hearing occurred. However, the petitioner's appeal was filed on January 3, 2007 and the petitioner has submitted no evidence of the outcome of the November 2, 2006 hearing on appeal. Rather, the petitioner asserts that the evidence submitted below establishes the requisite battery or extreme cruelty.

The petitioner's own statements regarding his wife's alleged abuse are not fully supported by the testimony of his sons, his friends and relatives. The record indicates that the temporary order of protection was granted ex parte on the basis of the petitioner's allegations in his family offense petition. Moreover, although the petitioner claimed that his wife hit one of his sons in his family offense petition, neither of the petitioner's sons is named as a protected party on the temporary order. On appeal, the petitioner submits no evidence that he was granted an extended order of protection at the November 2, 2006 hearing when his temporary order expired.

In sum, the relevant evidence fails to demonstrate that the petitioner's wife subjected him or either of his children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to establish that he entered into marriage with his wife in good faith, that he resided with her and that she subjected him or either of his children 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.

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.