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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

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FILE: [REDACTED]
EAC 06 134 50183

Office: VERMONT SERVICE CENTER

Date: DEC 12 2008

IN RE: [REDACTED]

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)

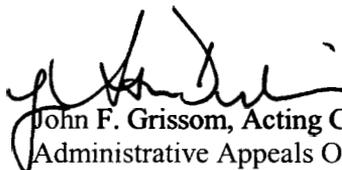
ON BEHALF OF PETITIONER:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 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 that her husband subjected her to battery or extreme cruelty.

Counsel submitted a timely appeal on April 20, 2007.

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:

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:

- (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.

The evidentiary 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.

* * *

- (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.

The record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Kenya who was admitted to the United States as a nonimmigrant visitor on September 17, 2002. She married J-N,¹ a United States citizen, on December 17, 2004 in Virginia. J-N- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on February 24, 2005. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner filed the instant Form I-360 on March 31, 2006. On August 21, 2006, the director issued a request for additional evidence and requested, among other items, additional evidence to establish that the petitioner had been subjected to battery and/or extreme cruelty by her husband and that the petitioner is a person of good moral character. The petitioner responded on October 16,

¹ Name withheld to protect individual's identity.

2006, and requested additional time in which to respond. The director issued a notice of intent to deny (NOID) the petition on November 30, 2006. The petitioner responded the NOID on January 29, 2007, and submitted additional evidence. After considering the evidence of record, including the evidence submitted by the petitioner in response to the NOID, the director denied the petition on March 21, 2007.

In support of her appeal, counsel submits an appellate brief and a copy of the “Immigrant Power and Control Wheel,” issued by the National Center on Domestic and Sexual Violence. As will be discussed below, the AAO finds that the petitioner has failed to overcome the grounds of the director’s denial.

The petitioner submits the following documents in support of her assertion that she was the victim of extreme cruelty:

- The petitioner’s first affidavit, dated February 23, 2006;
- The petitioner’s second affidavit, dated January 26, 2007;
- A letter from [REDACTED] dated September 21, 2006;
- A letter from Pathways Psychological Services, dated January 25, 2007;
- A letter from the [REDACTED] Ph.D., dated January 6, 2006;
- A letter from the [REDACTED], dated January 6, 2006;
- A letter from [REDACTED] dated January 9, 2006;
- Counsel’s January 26, 2007 response to the director’s NOID;
- Counsel’s May 17, 2007 appellate brief; and
- The “Immigrant Power and Control Wheel,” issued by the National Center on Domestic and Sexual Violence.

In her first affidavit, dated February 23, 2006 and submitted at the time the petition was filed, the petitioner stated that she became suspicious of her husband’s activities in January 2005, the month following their marriage. The petitioner stated that J-N- would disappear for periods of time and become defensive when questioned about his absence. He finally admitted that he had three children from a previous relationship, and that he had been sneaking off to spend time with them.

The petitioner stated that by February 2005, J-N- would tell her that he was “going to see a friend.” At the time, the petitioner was working a live-in job in an assisted living facility and was not sleeping at home. When she came home in the morning, it was unclear whether J-N- had spent the night in their apartment. The petitioner stated that by April 2005, J-N- began making statements such as “You should go back to Kenya”; “You only married me so you could stay here”; and “You have no right to ask me” when she questioned him regarding his whereabouts. The petitioner stated that, since her first husband was abusive, she “did not want to go through it again.” She also stated that she was afraid to question J-N- about his relationship with his ex-girlfriend and three children “because I was afraid he would become violent with me.”

The petitioner stated that, in June 2005, she came home from work one morning and J-N- had moved out. She contacted his friends, but they did not know where he was, and she had never met any members of his family. She has not seen J-N- since then, and still does not know where he is. She stated that, with the shame of being abandoned, she decided to relocate to Minnesota with the hope of starting over.

In her January 6, 2006 affidavit, the [REDACTED] Ph.D. states that, from the beginning of their marriage, the petitioner reported problems, as J-N- would disappear for several days at a time, and was "often surly and demanding" upon his return. [REDACTED] also confirms that J-N- disappeared in June 2005.

In his January 6, 2006 affidavit, the [REDACTED] states that he attempted to have J-N- accompany the petitioner to church so that he could talk to him, but that his attempts were unsuccessful. He also confirms that J-N- disappeared in June 2005.

In her January 9, 2006 affidavit, [REDACTED] reports that the petitioner complained to her that her husband "was staying out late and not coming home some nights," and that, one day she called to tell [REDACTED] that her husband had left.

In her second affidavit, dated January 26, 2007 and submitted in response to the director's NOID, the petitioner describes the physical and emotional abuse she endured during her first marriage in Kenya. Because of the experience of having endured an abusive relationship, she says, she did not want to argue with J-N- about anything: "It was easier to avoid confrontation all together than be afraid that [J-N-] would be as abusive to me as [her first husband] had been."

The petitioner states that since J-N- left and never returned, she has not spoken to him. She states that after one of J-N-'s friends did not know where he was, "I knew that I was done. I did not want to go through any more emotional or physical abuse. Throughout my first marriage to [my first husband], he had constantly been abusive and I could not take anymore from anyone." The petitioner states that as a result of her experience in her first marriage, particularly being constantly called "stupid," she believed that she was the problem in her marriage to J-N-. She states that the abuse in her first marriage "caused my marriage to [J-N-] to be very difficult because I could not say 'no' to him when he threatened my immigration status and started spending time with his ex-girlfriend." The petitioner also states that she is seeking treatment for depression.

In her January 26, 2007 response to the director's NOID, counsel states that J-N-'s "extramarital affair and threats to [the petitioner's] immigration status illustrate the extreme cruelty experienced by [the petitioner] during the marriage."

The January 25, 2007 letter from Pathways Psychological Services states that the petitioner is moderately depressed; that she has twice sought counseling; that she appears to be withdrawn from people; that she does not have good self-esteem; and that "she was affected by her relationship with [her] first husband in Africa." The AAO notes that the author of this letter makes no direct

correlation between the petitioner's depression and J-N-'s behavior toward her. However, the author of this letter provides no details which indicate his or her knowledge or belief regarding the petitioner's victimization, or any other statement which demonstrates that the petitioner's depression is attributable to her treatment by J-N-. Further, the AAO notes that the two visits referenced by the author of this letter both occurred after the director issued the NOID; the NOID was issued on November 30, 2006, the petitioner's two visits occurred on December 19, 2006 and January 11, 2007, and the letter was prepared on January 25, 2007.

The director found the petitioner's evidence unconvincing, and he denied the petition on March 21, 2007. In relevant portion, the director stated the following:

In your attorney's cover letter, she contends that your spouse's extramarital affair and threats to your immigration status illustrate the extreme cruelty experienced by you during the marriage. In reviewing your initial self-affidavit, you described his extra-martial affairs and indicated that when you confronted him, he would say things like, "You should go back to Kenya." Based on this statement alone, it does not appear that he was threatening to have you deported.

In your supplemental self-affidavit, you now testified that your first spouse . . . subjected you to verbal and physical abuse. You indicated that because of your first spouse's violent behavior towards you that you did not want to argue with [J-N-] about anything and again described his extra-martial affair and how he left without notice and never came back.

The note from Pathways Psychological Services indicates you were seen for counseling on December 19, 2006 and January 11, 2007, after the Service's request for evidence. In addition, it states "She is moderately depressed. She appears to be withdrawn from people. She was affected by her relationship with [her] first husband in Africa." The evidence suggests that you may have been subjected to battery or extreme cruelty by your first spouse. However, based on your description of [J-N-'s] behavior, it would suggest you were having marital difficulties. . . .

On appeal, counsel contends that the director erred in denying the petition. In her May 17, 2007 appellate brief, counsel states that J-N- subjected the petitioner to extreme cruelty through emotional abuse, as he made threats directed at her immigration status, became aggressive toward her, and caused her to fear that he would become violent; and that the petitioner perceived J-N-'s actions as extreme cruelty, due to her experience as a battered wife during her first marriage in Kenya. Counsel also states the following:

The examiner erred in concluding that [J-N-] was not threatening to have [the petitioner] deported by telling her, "You should go back to Kenya." In fact, this statement indicates a strong desire to have [the petitioner] return to her country of origin, and implies that [J-N-] could facilitate her return there by contacting

immigration officials. Additionally, when [J-N-] stated to [the petitioner], “You only married me so you could stay here,” he highlighted the vulnerability of her immigration status and reinforced his power over it. [The petitioner] felt that [J-N-] was threatening her immigration status with these comments . . . Importantly, [the petitioner] credibility has never been called into question during this petition process, and her good moral character has been established . . . Thus, her interpretation of these statements by [J-N-] should be accepted as true under the credible evidence standard. . . .

The examiner erred in concluding that [J-N-] did not subject [the petitioner] to extreme cruelty, but instead, that the couple was having more marital difficulties . . . [J-N-] made threats to [the petitioner’s] immigration status and was aggressive toward her, making her fearful he would become violent – a pattern of abusive behavior she was accustomed to from her first marriage. . . .

* * *

As a result of the abuse she suffered in her first marriage, [the petitioner] was afraid to argue with her second husband . . . She perceived [J-N-’s] actions towards her as “emotional abuse. . . .”

[The petitioner] is being treated for her depression as a result of the abuse she suffered from her first and second marriages. . . .

Section 204(a)(1)(J) of the Act requires CIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [U.S. Citizenship and Immigration Services (USCIS)].” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “Other forms of relevant credible evidence will also be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Soo Hoo, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

While the AAO finds the petitioner’s evidence in this particular case credible, it does not find it

sufficient to meet the petitioner's burden of proof. First, the AAO notes that the petitioner does not explicitly state or otherwise indicate that J-N- subjected her to battery, so the AAO will only discuss the petitioner's claim of extreme cruelty. The petitioner's allegation of extreme cruelty is based upon the claims that her spouse did not inform her that he had three children until after they were married; that he spent periods of time away from home without telling her where he would be; that he responded to her questions of where he had been with such responses as "You should go back to Kenya," "You only married me so you could stay here," and "You have no right to ask me"; that he made her feel frustrated and unwanted; that he left the marriage without notice; and that, due to her experience with physical abuse during her first marriage, the petitioner perceived J-N-'s actions as extreme cruelty.

While the petitioner reports that she perceived her J-N-'s statements that she should return to Kenya and that she only married him so she could remain in the United States as threats to her immigration status, there is no indication in the record that J-N- ever directly threatened her immigration status. While J-N-'s actions as described in the record may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the letters submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that J-N-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii), of the Act and her petition must be 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.

ORDER: The appeal is dismissed. The petition is denied.