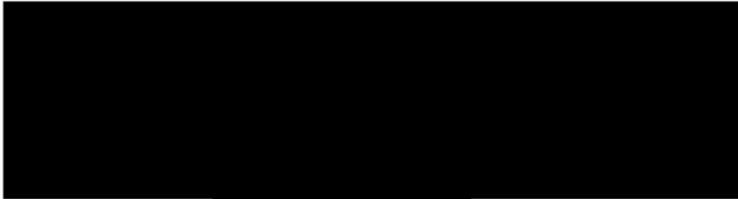




U.S. Citizenship  
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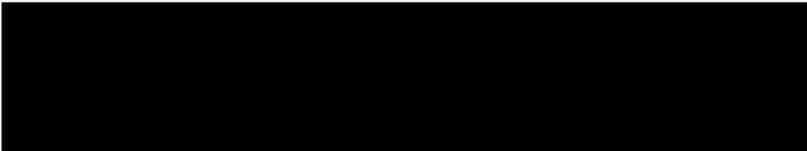
BS

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 01 2009**  
EAC 06 029 51927

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:



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 he entered into marriage with his wife in good faith.

Counsel submitted a timely appeal on May 18, 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:

- (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.

\* \* \*

- (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 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.

\* \* \*

- (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 is a citizen of Nigeria who entered the United States in B-2 visitor status on December 10, 1988. He married D-A-<sup>1</sup> a United States citizen, on May 21, 1999. D-A- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on March 13, 2000. It was approved on July 30, 2002. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on September 19, 2002.

Approval of the Form I-130 was revoked on April 8, 2004. In his notice of revocation, the district director of the USCIS Baltimore District Office stated that "it appears you entered this marriage to gain benefit from a 'sham' marriage." The Form I-485 was also denied on April 8, 2004.

The petitioner filed the instant Form I-360 on November 3, 2005. The director issued a request for additional evidence on August 22, 2006, and requested additional evidence to establish that the petitioner married D-A- in good faith. The petitioner responded on October 24, 2006, and submitted additional evidence. On December 4, 2006, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he married D-A- in good faith. The petitioner responded to the NOID on March 2, 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

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<sup>1</sup> Name withheld to protect individual's identity.

the petition on April 17, 2007. Counsel submitted a timely filed appeal. Although counsel stated on the Form I-290B that he would be submitting a brief and/or additional evidence within 90 days, on January 26, 2009 he confirmed to the AAO that no such brief or additional evidence had been submitted.

### **Good Faith Entry into Marriage**

The sole issue on appeal is whether the petitioner has established that she married D-A- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that the petitioner's self-affidavit, as well as the affidavits from his friends were significantly lacking in specific details to establish eligibility. The director also noted that the tax returns did not establish that he had married D-A- in good faith, as: (1) the returns were not signed, and there was no evidence that they had in fact been filed; and (2) the returns were marked as "married filing separately" rather than filed jointly.

On the Form I-290B, counsel states that the director denied the petition in error. Counsel contends that the director's decision is inconsistent with the evidence of record; that the director failed to give adequate weight to the evidence presented; and that the affidavits of record contain detailed information about the couple. Counsel states that the evidence of record is sufficient to demonstrate that the petitioner married D-A- in good faith.

The record of proceeding contains the following evidence relevant to the petitioner's claim of good faith entry into the marriage:

- The petitioner's October 18, 2003 self-affidavit;
- The petitioner's October 27, 2005 self-affidavit;
- The petitioner's undated affidavit, which was submitted with counsel's February 28, 2007 NOID response;
- Counsel's October 23, 2003 letter;
- Counsel's October 21, 2006 letter;
- Counsel's February 28, 2007 letter;
- A letter from [REDACTED] dated September 18, 2006;
- A letter from [REDACTED], dated September 22, 2006;
- A letter from [REDACTED] dated February 13, 2007;
- A letter from [REDACTED], dated February 19, 2007;
- A letter from [REDACTED], dated February 21, 2007;
- The USCIS Baltimore District Office April 8, 2004 notice of revocation of the Form I-130's approval;
- A residential lease agreement, signed by D-A- and the petitioner on July 1, 1998;
- A copy of a completed Form SF-2809, Health Benefits Registration Form, signed by D-A- on December 9, 1996, and made effective January 5, 1997;

- A copy of the petitioner's final divorce decree from his previous spouse, dated September 30, 1998;
- A copy of D-A- and the petitioner's marriage certificate;
- Photographs of the couple;
- Copies of tax returns;
- Evidence that the petitioner received medical care in March 2006, as a dependent on D-A-'s health insurance policy; and
- Evidence that D-A- and the petitioner lived together in a hotel in 2002.

In his October 18, 2003 affidavit, the petitioner stated, with regard to his intent upon entering into the marriage, that he was "totally surprised and distressed by the Service's statement that I married my spouse only for immigration purposes"; that he married D-A- in 1999; that he loves his wife; that D-A- loves the petitioner; that he and D-A- dated for several years before getting married; and that his marriage was based on pure love.

In his October 27, 2005 affidavit, the petitioner stated, with regard to his intent upon entering into the marriage, that he met D-A- in or around April 1991: he was driving a taxi cab, and D-A- was one of his passengers on her way to work one day. According to the petitioner, after they met he and D-A- "became lovers and started going out together." The petitioner stated that, as the relationship grew stronger, they began living together in 1993, and married in 1999.

In his third affidavit, which was undated, but submitted with counsel's February 28, 2007 NOID response, the petitioner states that he and D-A- have always lived together until their separation, and that he married in D-A- in good faith after having lived together for many years. The petitioner states that, as a 61-year-old, he does not have time to be involved in sham marriages.

In his October 23, 2003 letter, which was submitted in response to the Baltimore District Director's notice of intent to revoke approval of the Form I-130, counsel stated that that totality of circumstances in the petitioner's case supported a conclusion that the petitioner had entered into the marriage in good faith. Counsel asserted that the petitioner and D-A- "have known each other for some time, they have lived together prior to the marriage, [and have] continued to live together after the marriage."

In his October 21, 2006 letter, counsel stated that the evidence of record demonstrates that the petitioner entered into marriage with D-A- in good faith.

In his February 28, 2007 letter, counsel stated that the evidence of record "shows clearly that the couple's marriage is legitimate and in good faith at the inception of the marriage."

Joseph Ewumi attests to the bona fides of the marriage between D-A- and the petitioner: he states that he knew the couple when D-A- and the petitioner when they were living together in Maryland in 1993; and that he helped them prepare for their wedding in 1999. [REDACTED]

████████████████████ and ████████████████████ all state their belief that the petitioner entered into marriage with D-A- in good faith.

Upon review, the AAO finds that the testimony of counsel and the petitioner fail to establish that the petitioner married D-A- in good faith. The petitioner's affidavits provide very little information that would allow the AAO to ascertain his intentions upon entering into marriage. The only information he provides regarding the couple's courtship is that they met in 1991 when D-A- was a passenger in a taxi cab he was driving, that they started dating, that they moved in together in 1993, and that they married in 1999. The petitioner provides no information regarding the couple's eight-year courtship, their decision to marry, or their early life together. The petitioner does not describe his first impressions of D-A-, or their first date. No information is provided regarding the types of activities they enjoyed together while dating. He does not discuss whether cultural differences or his then-current marriage (which did not end until 1998) were issues in the relationship before they married. Nor does counsel's testimony provide any such information. Despite having been specifically placed on notice in the director's denial that the petitioner's statements provide insufficient detail, both counsel and the petitioner elect not to submit additional testimony on appeal.

Nor do the five affidavits from friends of the petitioner establish that the petitioner married D-A- in good faith. First, they provide none of the information discussed in the previous paragraph, and are significantly lacking in detail. Second, it is the intentions of the petitioner at the time of the marriage that are at issue here, not the feelings of these individuals toward the marriage. Finally, the AAO notes that the affidavits of ████████████████████ and ████████████████████ are identical to one another, which raises the question of who actually wrote them.

The supporting documentation submitted by the petitioner does not establish that he married D-A- in good faith. The Form SF-2809, Health Benefits Registration Form, Federal Employees Health Benefit Plan (FEHBP), signed by D-A- on December 9, 1996, and made effective January 5, 1997, added the petitioner to D-A-'s health insurance policy. The Form SF-2809 states the following: "employee is adding spouse to already existing family coverage." However, the AAO notes that the petitioner did not marry D-A- until 1999, and his divorce from his previous spouse did not occur until 1998. Thus, it is unclear to the AAO how the petitioner could have been added to D-A-'s FEHBP coverage, as his spouse, in 1997. The information provided on this form is incorrect, and may have been submitted in an attempt to defraud the federal government. The AAO, therefore, will not consider this form as evidence of the petitioner's good faith entry into the marriage. The photographs indicate only that the petitioner and D-A- were together on several occasions, as they are neither explained, nor dated. Nor do the tax returns indicate the petitioner's good faith entry into the marriage. While counsel correctly notes that the tax returns state that D-A- and the petitioner were married, they do not establish that he married D-A- in good faith. The filing status chosen by D-A- and the petitioner—married, but filing separately—does not speak to the petitioner's intentions upon entering into the marriage. Further, these tax returns are unsigned, and there is no evidence they were ever filed. The evidence that the petitioner received medical care in 2006 is irrelevant; such information is not evidence of his intentions upon entering into marriage in 1999. Nor do the hotel receipts from 2002 establish that he

entered into marriage in good faith in 1999. Nor does the residential lease from 1998 establish the petitioner's intentions upon entering into the marriage in 1999: as noted by the director, this lease only demonstrates a shared residence; this document alone does not establish the petitioner's intentions upon entering into the marriage.

The petitioner has failed to establish that he entered into marriage with D-A- in good faith. The petitioner has failed to provide specific and detailed information regarding the couple's first meeting; his first impressions of D-A-; their first date; their courtship; activities they enjoyed; their decision to move in together; their decision to marry; and their early life together. He provides no information on such topics as how cultural differences were bridged, or how his other marriage (the petitioner divorced his previous wife in 1998, which indicates that the petitioner was married to someone else for the first seven years of the relationship) factored into the relationship. Despite having been specifically placed on notice in the director's denial that the petitioner's statements of record provide insufficient detail, both counsel and the petitioner elected not to submit additional testimony on appeal. Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with D-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that he entered into marriage with D-A- in good faith. He is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the 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.