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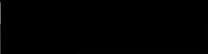
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FILE:



Office: VERMONT SERVICE CENTER

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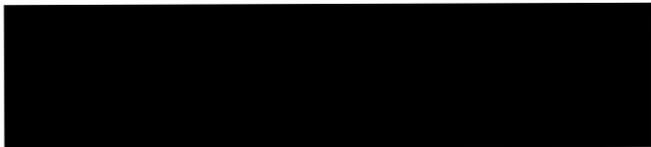
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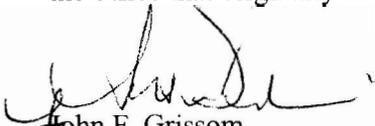
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 The director's decision will be withdrawn and the matter remanded for further action.

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 filed a timely appeal on November 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 (ii) or (iii) of subparagraph (B) . . . , 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 petitioner is a citizen of Nigeria who entered the United States in B-2 visitor status on June 18, 2004. She married K-D-,¹ a United States citizen, on August 6, 2004. K-D- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on December 8, 2004. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was withdrawn, at K-D-'s request, on April 28, 2006. The Form I-485 was denied on May 12, 2006.

The petitioner filed the instant Form I-360 on September 7, 2006. On March 29, 2007, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner was subjected to battery and/or extreme cruelty by K-D-; and that she married K-D- in good faith. The petitioner responded on May 25, 2007. After considering the evidence of record, the director denied the petition on November 5, 2007.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that she was the victim of battery and/or extreme cruelty perpetrated by K-D-. In support of her assertion that she was the victim of battery and/or extreme cruelty, the petitioner submits affidavits and medical records.

On the Form I-360, the petitioner stated that she married K-D- on August 6, 2004, and that she and K-D- lived together from August 2004 until March 2005.

In her July 12, 2006 letter, the petitioner stated that she entered the United States in June 2004, and met K-D- that month. She testified that when K-D- proposed marriage, she told him that he would first have to travel to Nigeria to meet with her parents and take a few other traditional steps before they could marry, as is customary in her culture. According to the petitioner, K-D- convinced her to marry him, and promised that he would visit her parents in Nigeria shortly after the marriage. The petitioner stated that, a few months after their marriage, she asked K-D- why he had not begun making plans to travel to Nigeria. According to the petitioner, “[t]his began to cause very serious problems in our marriage.” K-D- told the petitioner that he would not travel to Nigeria, as he had heard it was a dangerous place to visit. He also began to criticize Nigeria and Nigerian culture. The petitioner stated that she and K-D- “had problems” due to cultural differences, and that K-D- “has never gone to visit my parents to do the traditional things he is supposed to do.”

In an undated letter that accompanied her July 12, 2006 letter, the petitioner stated that the emotional pain she endured in her marriage caused medical problems. She stated that she was depressed for a very long time, and that her depression affected her eating habits, which caused her to become anemic.

In an August 14, 2006 letter written in support of the Form I-360, K-D- states that he and the petitioner had serious problems in their marriage and that, although he does not want to be with her, he hopes that whatever appeal she makes will be approved.

In his August 16, 2006 letter, [REDACTED] the petitioner’s uncle, states that the petitioner’s marriage to K-D- caused her a great deal of emotional pain.

In his March 29, 2007 request for additional evidence, the director found this evidence insufficient to establish that the petitioner was the victim of battery or extreme cruelty by K-D-, and requested additional evidence.

In response, the petitioner submitted more affidavits, and medical records. In her May 21, 2007 affidavit, the petitioner stated that K-D-’s behavior changed “[r]ight after we got married.” The maltreatment by K-D- began when she suggested to him that they visit Nigeria in order to perform a traditional wedding ceremony. According to the petitioner, that suggestion was “probably what triggered him to try and keep me at home,” and that, during that month, she was “particularly

isolated.” The petitioner reported that K-D- forced her to stay at home, and that she was not permitted to see anyone, including her mother and sister. He did not allow her to go to church, as he feared that she would make friends who would brainwash her. The petitioner stated that, because she had no car, she was not able to do anything about the isolation, and that every movement she made was orchestrated by K-D-. She stated that K-D- called her names and yelled at her for no apparent reason; that he snatched the television remote control out of her hands; that K-D- told her that there were better-looking women he could be with; and that he told the petitioner that she should be grateful for him. The petitioner reported that her self-esteem was so low that, in the beginning, she believed him. After the Forms I-130 and I-485 were filed, K-D- began using her immigration status as a means to control her, telling her every time they had an argument that he was going to send a letter to immigration authorities canceling her case. According to the petitioner, K-D- felt that he owned her, and that he could do anything he wanted.

In her May 24, 2007 affidavit, [REDACTED], the petitioner’s mother, stated that, shortly after the wedding, “things took a drastic turn.” According to [REDACTED] she did not hear from the petitioner. She went to the petitioner’s home, saw her looking very sick, and questioned her. [REDACTED]

[REDACTED] testified that the petitioner told her that K-D- had changed, and that he had insulted her, insulted her family and their traditions, yelled at her, and called her names. K-D- came home before she left and, in the presence of [REDACTED] he started yelling at the petitioner, calling her names, and telling her that the marriage would not work. [REDACTED] stated that, at that point, it was clear that the petitioner was very intimidated by K-D-.

In his May 15, 2007 affidavit, [REDACTED] the petitioner’s brother-in-law, stated that K-D- and the petitioner began having problems in their marriage soon after the wedding. [REDACTED] described an incident in which he visited the petitioner and K-D- at their home. He stated that the petitioner had lost weight and was depressed. According to [REDACTED], the petitioner told him that she feared for her life, and that when K-D- entered the room, she did not say another word to [REDACTED]. Mr. [REDACTED] stated that the petitioner appeared to be very intimidated by K-D-, and that anyone could have felt the tension in the room, and seen the fear in the petitioner’s eyes.

In his December 5, 2007 denial, the director found the petitioner’s testimony self-serving, and found that, without corroborating evidence, the petitioner had failed to establish that she had been subjected to battery or extreme cruelty.

On appeal, counsel submits a psychological evaluation from [REDACTED]. In his evaluation, [REDACTED] testifies that the petitioner told him that, after the wedding, K-D- became upset and argumentative when the petitioner spoke to him about going to Nigeria; that he insulted the petitioner’s culture and village elders; said that Nigeria was a dangerous place he would not visit; called the petitioner names; and told her that her previous fiancé had left her because of her “stupid ways.” [REDACTED] notes K-D-’s large physical size, and states that, when he talked to the petitioner, he did so with clenched fists. [REDACTED] also testifies that the petitioner told him that K-D- threatened to hit her. [REDACTED] states that K-D- was possessive: he would not let the petitioner watch what she wanted to watch on television; he would only allow her to go where he wanted her to go;

he would not allow the petitioner to see her mother; and he only allowed the petitioner to buy the food he wanted when they went shopping. ██████ states that the petitioner began questioning her self-worth; felt she was no longer attractive; and no longer wanted to live. He also states that the petitioner told him that her mother began noticing that she was not happy anymore. ██████ states that the petitioner has severe depression, with evidence of sadness, crying spells, worry, loss of initiative, and feelings of inferiority.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that she was subjected to battery or extreme cruelty.² The AAO notes first the gradual escalation of the petitioner's testimony regarding the behavior of K-D- during the marriage. At the time the petition was filed, the petitioner's claim of battery or extreme cruelty consisted primarily of K-D-'s failure to travel to Nigeria for a traditional marriage, as he had agreed to do, and his criticisms of Nigeria and Nigerian culture. The petitioner also reported that the emotional pain she had endured during her marriage had caused her to become depressed, that the depression had affected her eating habits, and that the poor eating habits had caused anemia.

After being notified by the director in his request for additional evidence that such testimony was insufficient, the petitioner responded with testimony indicating a far more dire situation. While K-D-'s alleged abuse had previously consisted of criticizing Nigeria and Nigerian culture, and refusing to travel to Nigeria for a traditional marriage, the abuse now consisted of isolating the petitioner from others; controlling her behavior; calling her names; yelling at her; and threatening her immigration status. The petitioner's mother reported that K-D- yelled at the petitioner in front of her, and that the petitioner was intimidated by him; and the petitioner's brother-in-law reported that the petitioner told him that she feared for her life. On appeal, ██████ reported that the petitioner had told him that K-D- had threatened to hit her.

This gradual escalation in the petitioner's reporting of the severity of the maltreatment she received from K-D- severely undermines the credibility of her claim. Beyond the escalatory nature of the testimony of record, the AAO also notes inconsistencies in that testimony. For example, in her July 12, 2006 letter, the petitioner stated that she asked K-D- why he had made no plans to visit Nigeria a "few months after we got married," and that the problems in the marriage began after she questioned him. However, in her May 21, 2007 affidavit, the petitioner stated that K-D-'s behavior changed "[r]ight after we got married." The petitioner's mother and brother-in-law also reported that the marital problems began immediately, rather than a few months into the marriage, as initially reported. 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). Doubt cast on any aspect of the petitioner's

² The AAO withdraws the director's statements with regard to "corroborating evidence." A lack of corroborating evidence is not, in and of itself, a sufficient reason to discount testimony, as corroborating evidence is not always available in this type of case.

proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The inconsistencies in the testimony of record are not limited to when the alleged abuse began. The AAO notes that, while [REDACTED] states that the petitioner told him that K-D- had threatened to hit her, and that she no longer wanted to live, the petitioner made no such claims in her testimony. [REDACTED]

[REDACTED] also states that the petitioner told him that K-D- did not allow her to see her mother, but the record contains testimony from the petitioner's mother describing a visit to the petitioner. The petitioner's brother-in-law states that the petitioner told him that she feared for her life, but the petitioner made no such claim in her testimony. Again, 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* at 591-92. The multiple inconsistencies and discrepancies of record undermine the credibility of the petitioner's claim. As [REDACTED] evaluation is based upon the petitioner's testimony to him, and the inconsistencies in her testimony have called into question the credibility of her testimony, the evidentiary weight of his evaluation is diminished.

For all of these reasons, the AAO finds that testimony of record fails to establish that the petitioner was subjected to battery or extreme cruelty.

Nor do the medical records establish that the petitioner was subjected to battery or extreme cruelty. The record includes medical reports indicating that the petitioner had a physical examination on April 26, 2005, as well as blood draws on May 3, 2005 and July 19, 2006.

The record from the petitioner's April 26, 2005 examination stated the petitioner presented with generalized malaise and fatigue and complained that her joints and muscles ached; that she had chills; and that she was experiencing nausea. The petitioner reported several other symptoms, but the handwriting on the medical report is illegible. Her physical examination was "unremarkable," so blood work was ordered. The petitioner also submitted what appears to be a computer-generated report of a May 3, 2005 blood draw. Although the petitioner testified that she became anemic as a result of abuse by K-D-, the AAO notes that this report does not mention anemia; no analysis of this report was submitted. There is no explanation of what this documentation is intended to demonstrate to U.S. Citizenship and Immigration Services (USCIS).

The evidence regarding her July 19, 2006 blood draw consists of a doctor's order, a "laboratory report," and what appears to be a computer-generated report of the blood draw. Again, there is no analysis or explanation as to what this documentation is intended to demonstrate to USCIS. While the AAO does note that the doctor's order contains the handwritten word "anemia" in the lower right-hand corner, it is unclear whether this notation is related to the results of the blood draw, or whether it is an instruction to the laboratory to test for anemia.

Accordingly, the medical evidence of record fails to establish (1) that the petitioner suffers, or suffered from, anemia; and (2) that the anemia she reports having suffered was linked to any maltreatment by K-D-.

The petitioner has failed to establish that the actions of K-D- rose 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 affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that K-D-'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. The petitioner has failed to establish that K-D- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that K-D- subjected her to battery and/or extreme cruelty. However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)³ on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response within the 60-day period. On remand, the director need only address the issues before the AAO on appeal; i.e., whether the petitioner has demonstrated that she was subjected to battery or extreme cruelty by K-D-.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's November 5, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

³ USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on September 7, 2006.