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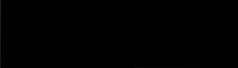
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 10 2009

EAC 07 010 50557

IN RE:

Petitioner:



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)

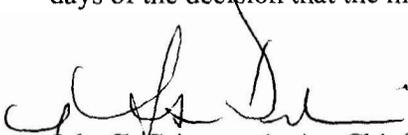
ON BEHALF OF PETITIONER:



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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 for failure to establish: that the petitioner resided with the citizen or lawful permanent resident; the requisite battery or extreme cruelty; and that the petitioner entered into the marriage in good faith.

On appeal, counsel submits a memorandum of law and additional documents.

The AAO concurs with the director's determination that the petitioner has not established: that the petitioner resided with the citizen or lawful permanent resident; the requisite battery or extreme cruelty; and that the petitioner entered into the marriage in good faith. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 further explained 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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(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 explained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a

police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who was admitted to the United States as a P-3, nonimmigrant artist/entertainer. On August 26, 2000, the petitioner married N-F,¹ a naturalized United States citizen, in New Jersey.

The petitioner filed the instant Form I-360 on October 6, 2006. The director issued a Request for Evidence (RFE) on October 19, 2006 requesting evidence that the petitioner is a person of good moral character and that he had married N-F- in good faith. The director issued a second RFE on May 1, 2007 requesting evidence that the petitioner had resided with his spouse, evidence to show that the petitioner had been the subject of battery or extreme cruelty by his spouse, and evidence that he had entered into the marriage in good faith.

The petitioner responded to the RFEs by submitting a statement and additional evidence. After considering the evidence in the record, including the evidence submitted in response to the RFEs, the director denied the petition on September 26, 2007. As will be discussed, we concur with the findings of the director that the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, and that he entered into the marriage in good faith. The AAO also finds that the record does not include the requisite information establishing the petitioner's good moral character. The AAO also notes that the petitioner's spouse had

¹ Name withheld to protect individual's identity.

been previously married but that the record does not include evidence of the termination of that marriage.

Residence

The record includes a copy of the petitioner's marriage certificate showing the date of his marriage as August 26, 2000 to N-F. On the Form I-360, the petitioner indicates that he resided with N-F- from August 1998 to June 2005 and that he last resided with N-F- at [REDACTED] in East Orange, New Jersey. The petitioner's Form G-325, Biographical Information, indicates that the applicant resided at the [REDACTED] address from December 17, 1998 to June 15, 2005. As the director observed, the petitioner provided a copy of his New York State driver's license issued on December 2, 2003 indicating that the petitioner lived in the Bronx, New York. The record also includes a copy of a New Jersey Domestic Violence Complaint and Temporary Restraining Order request filed by the petitioner against N-F- listing the [REDACTED] address as the home address on June 13, 2005.² The record further contains one³ bank statement from Fleet National Bank dated June 29, 2004 addressed to both the petitioner and N-F- at the [REDACTED] address. The petitioner explained that the New York address on his driver's license belonged to his wife's sister and that he and N-F- lived there temporarily until the completion of their house in New Jersey. The petitioner further noted that he did not change his driver's license to his New Jersey address as he worked in New York as a cab driver.

The AAO acknowledges the petitioner's explanation regarding the documentary evidence showing different addresses for him while he claimed a joint residence with N-F-. The AAO also notes the October 23, 2007 affidavit from a friend who declared that he did not attend the petitioner's wedding but visited the petitioner and his wife a couple of times at their residence in New Jersey. The affiant, however, does not provide any probative information regarding the residence or the circumstances and events of his visits. In addition, the petitioner does not provide any probative testimonial evidence regarding his residence with N-F-. The petitioner does not provide a description of the apartment, its location, their shared belongings in the apartment, or other information that would assist in determining that the petitioner actually lived at the residence. The lack of an address on the majority of the bank account statements submitted that list both the petitioner and N-F- also casts doubt on an established joint residence of the couple. The AAO notes that the applicant in a personal statement indicated that he and N-F- had filed for bankruptcy; however, the record contains no information regarding this legal filing and the address and joint property that was part of the estate. The AAO finds that the applicant has not provided sufficient credible evidence establishing that he and N-F- actually resided together.

² The record includes a copy of a mutual restraint order issued July 18, 2005 in place of a final restraining order issued against N-F-.

³ The record includes copies of other bank statements from various banks that include both the petitioner and N-F-'s name but that do not list an address.

Battery or Extreme Cruelty

The petitioner initially did not submit a separate statement regarding abuse but instead submitted a copy of a New Jersey Domestic Violence Complaint and Temporary Restraining Order request filed by the petitioner against N-F-. In response to the director's RFE, the petitioner submitted a personal statement indicating that his wife nagged him about getting a better job, changed the locks on their marital residence on June 13, 2005, talked to him in demeaning manner, tried to hit him on the head with a flashlight on or about June 10, 2005, did not show him affection, and on or about July 2004 moved out of the marital bedroom after they filed for bankruptcy. In addition, the record includes a mutual restraint order issued July 18, 2005 wherein the petitioner and N-F- agree to not contact, assault, harass, terrorize, or call each other.

The AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of his wife that constitutes battery or extreme cruelty. The petitioner has not demonstrated that N-F-'s actions and rejection of his intimacy constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. As described, N-F-'s actions, while maybe unkind and inconsiderate, 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 fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that N-F-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The petitioner in this matter has provided a general statement that in and of itself does not establish credibility and is sufficiently vague as to not lend itself to an evaluation regarding credibility. The AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and no detail of specific harm to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. **In this matter, he has failed to do so. Accordingly, we concur with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.**

Good Faith Entry into Marriage

The petitioner initially did not submit any information regarding his relationship with N-F- other than the marriage certificate, two photographs of the wedding, and the Domestic Violence Complaint and Temporary Restraining Order request. In response to the director's RFE, the petitioner provided statements from two individuals who indicated that they witnessed the petitioner's wedding. As referenced above, the petitioner provides an October 23, 2007 affidavit from a friend who declared that he did not attend the petitioner's wedding but visited the petitioner and his wife a couple of times at

their residence in New Jersey.

As the director found, two photographs of the couple in wedding attire do not establish the petitioner's good faith entry into the marriage. Despite a claimed relationship of more than seven years, the petitioner provided no other photographs of shared events or special occasions either prior to or after their marriage. In addition, the petitioner provided no details regarding how he met N-F- and did not offer probative details of their life together before or after their marriage except as it relates to the claimed abuse. The record does not establish that the petitioner entered into marriage with N-F- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

We concur with the director's determination that the petitioner has not demonstrated the requisite residence, battery or extreme cruelty, or entry into a good faith marriage.

Beyond the decision of the director, the record before the AAO does not include the requisite evidence of the petitioner's good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. The record does not include an affidavit from the petitioner regarding his good moral character and the record does not include police clearances or state-issued criminal background checks. As the record does not include the requested clearances, the AAO is precluded from finding that the petitioner has established good moral character. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Despite the petitioner's ineligibility based on the present record, this case must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

As always 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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.