

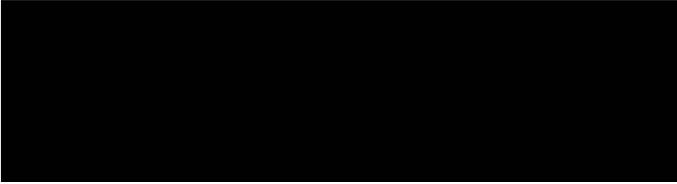


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

86  
1



FILE: [REDACTED]  
EAC 06 231 51151

Office: VERMONT SERVICE CENTER

Date: **MAY 15 2009**

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: (1) that he shared a joint residence with his wife; (4) that his wife subjected him to battery or extreme cruelty; and (5) that he married his wife in good faith.

Counsel filed a timely appeal on June 24, 2008.

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 United States 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 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.

\* \* \*

- (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 petitioner is a citizen of Nigeria who entered the United States as an F-1 student on September 17, 2002. He married S-N-<sup>1</sup> a citizen of the United States, on April 27, 2004. S-N- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 30, 2005. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date.

The officer-in-charge (OIC) of the USCIS Oklahoma City Office denied the Form I-130 on April 20, 2006. The OIC stated in his decision that the petitioner and S-N- were not sharing a residence. The ultimate finding of the OIC was that the petitioner had married S-N- for the sole purpose of obtaining immigration benefits. The OIC denied the petitioner's Form I-485 on that same date.

The petitioner filed the instant Form I-360 on July 17, 2006. The director issued a request for additional evidence on August 15, 2006, and requested additional evidence to establish that the petitioner is a person of good moral character. The petitioner responded on September 18, 2006.

The director issued a notice of intent to deny (NOID) the petition on January 10, 2008, which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he shared a joint residence with S-N-; that S-N- subjected him to battery or extreme cruelty; and that he married S-N- in good faith. The petitioner responded to the director's NOID on February 11, 2008. After considering the evidence of record, the director denied the petition on May 23, 2008.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

---

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

### Joint Residence

The first issue on appeal is whether the petitioner has established that he and S-N- shared a joint residence. The petitioner testified on the Form I-360 that he and S-N- shared a joint residence from April 2004 until May 2006. The petitioner submits utility bills, bank statements, and tax returns as evidence that he and S-N- lived together at [REDACTED] in Edmond, Oklahoma.

However, questions arose during the petitioner's permanent residency interview which undermined the petitioner's evidence that he and S-N- were living together. The AAO notes that the petitioner told the interviewer that he and S-N- had been living apart since December 2005. In his June 10, 2006 affidavit, the petitioner stated that he and S-N- began living together in March 2004. He also stated that S-N- moved from Edmond to Oklahoma City "around June" of 2005 so that she could pursue her G.E.D. The petitioner also stated that after the Form I-130 was denied in April 2006, he and S-N- moved to S-N's mother's home, where they lived for a week and a half. After that, they moved into another apartment together.

In his January 10, 2008 NOID, the director noted that the petitioner's statement that he and S-N- began living together on March 1, 2004 conflicted with his statement on the Form I-360 that they began living together on April 27, 2004. The director also noted that although the Forms G-325A indicated that the petitioner and S-N- were living together at the [REDACTED] address in Edmond, information that had been obtained by the OIC had indicated that S-N- began residing at the [REDACTED] address in Oklahoma City on July 12, 2005. The director informed the petitioner that, as a result of these inconsistencies, his claim to having shared a joint residence with S-N- carried little weight, and requested a statement from the petitioner explaining these inconsistencies.

In his January 26, 2008 response to the director's NOID, the petitioner stated that he and S-N- began living together on March 1, 2004, and that "anything otherwise was a mistake." The petitioner also stated that the reason he did not move with S-N- to the [REDACTED] address with S-N- "was because of drugs."

In his May 23, 2008 denial, the director noted that the petitioner had been advised in the NOID "that your administrative file contained contradictory information of the residences you claimed to live at with [S-N-]," and that "the periods of time that you indicated you lived with your wife are contradicted by other documents which name different addresses at the same periods of time." The director stated that the petitioner's assertions had failed to provide "a reasonable explanation as to why your documents display such contradictory information." The director also stated that "despite your explanation, the documentation strongly speaks to the fact that you and your wife failed to maintain a common residence." The director also noted the inconsistent answers that the petitioner and S-N- had provided at their permanent residency interview in 2006.

On appeal, the petitioner submits another affidavit. In his July 15, 2008 affidavit, the petitioner states that although S-N-'s housing assistance (Section 8 housing) was approved in July 2005, "there was

never a time my wife move[d] her stuff out of our house until May of 2006.” He states that S-N- obtained the apartment on [REDACTED] in Oklahoma City “to continue the drug activities with her brother.”

The AAO agrees with the director’s analysis. The AAO finds first that the evolving length of the claimed period of a shared joint residence undermines the petitioner’s claim. As noted previously, at the time the petition was filed, the petitioner claimed that he and S-N- had begun living together on both March 1, 2004 and April 27, 2004. Several dates have been provided for the end date of the claimed period of joint residence. When the petitioner filed his Form G-325A on September 30, 2005, he claimed to be living at the [REDACTED] address in Edmond with S-N-. However, at the time of his permanent residency interview in April 2006, the petitioner told the interviewer that S-N- had moved from the marital residence into her own apartment on [REDACTED] in Oklahoma City in December 2005. On appeal, the petitioner states that S-N-’s application for government housing assistance was approved in July 2005.

While the AAO acknowledges that the petitioner has submitted some documentary evidence of a shared joint residence, it finds that such evidence fails to sufficiently explain the inconsistencies in the petitioner’s testimony. That the claimed period of joint residence has evolved during the pendency of the petitioner further undermines the petitioner’s claim. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with S-N-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Battery or Extreme Cruelty**

The second issue on appeal is whether the petitioner has established that S-N- subjected him to battery or extreme cruelty. In his June 10, 2006 affidavit, the petitioner stated that the couple’s major problems began one year into the marriage, in mid-2005. According to the petitioner, it was at that point that he discovered that S-N- would rather stay home with friends, watching television and smoking, than work. The petitioner testified that, whenever he confronted S-N- about this, she became angry and tried to start fights. He stated that he spent nights at the homes of friends, his sister-in-law, and his mother-in-law in order to avoid fighting with S-N-. On one occasion, after S-N- had abused the couple’s cell phone plan, the petitioner called to disconnect S-N-’s phone. He stated that, while he was on the phone with the cell phone company, S-N- jumped on him, yelled at him, scratched his arm, punched his jaw, and threw the phone at his chest. On another occasion, S-N- told the petitioner that she could not get a job because she had no car. The petitioner stated that he took out a bank loan to buy S-N- a car, but she drove the car to Kansas and “broke the engine.” The petitioner stated that on another occasion, S-N- decided to earn her G.E.D., so she decided to move to Oklahoma City without the petitioner. The petitioner testified that S-N-’s attitude grew worse each day. The petitioner also stated that when S-N- asked him for money or asked to drive his car, and he refused, S-N- would become angry, swear at him, call him names, and try to fight with him. The petitioner explained that on May 21, 2006, he came home to find the petitioner and her friends smoking in the house. The petitioner stated that he told her friends that if they did not leave, he would call the police. The petitioner also discovered that twenty dollars was missing from one of his drawers. He took twenty

dollars from S-N-'s purse, and she punched him. The petitioner left and, when he returned, S-N- refused to let him inside, and told him that he had one day in which to move his things. The petitioner reported that three days later, S-N-'s brother stole his car.

In her June 17, 2006 letter, [REDACTED], S-N-'s mother, stated that S-N- has an anger problem, and that she is "100% sure" that S-N-'s "bad attitude is messing up her marriage."

In his January 10, 2008 NOID, the director found the evidence of record insufficient to establish that the petitioner had been subjected to battery or extreme cruelty by S-N-. The director found that, while S-N- may have had "an anger issue," neither the testimony of either the petitioner or [REDACTED] nor the evidence of record was sufficient to establish the petitioner's claim of battery or extreme cruelty. The director also notified the petitioner that the abuse to which he was allegedly subjected by S-N-'s brother could not be considered.

In response, the petitioner submitted an additional self-affidavit, another letter from [REDACTED] a letter from [REDACTED] S-N-'s sister, and [REDACTED]

In his January 26, 2008 affidavit, the petitioner stated that he never filed police reports, as he thought that doing so would only make matters worse. He stated that although S-N- abused him verbally and physically, he did his best to "skip away" and spend the night elsewhere. He testified that S-N- called him names; ridiculed his African heritage and culture; ripped the buttons off of one of his shirts; threw a rock at him; "ran the phone bill high several times," threw a cell phone at him; broke his laptop computer; and cut his finger with a piece of the broken laptop. The petitioner stated that his experience with S-N- was painful and traumatic, and that he has started to question the meaning of life and why bad things happen to good people. He also stated that he double-checks his room to this day to make sure it is safe. He also began to question the existence of God.

In her undated letter, [REDACTED] S-N-'s sister, stated that the petitioner stayed in her home on two different occasions after disputes with S-N-. She stated that S-N- never took the marriage seriously, and had several extramarital affairs. According to [REDACTED] one of those affairs resulted in the birth of a child.

In her January 18, 2008 letter, [REDACTED] stated that she personally witnessed S-N- abusing the petitioner. She stated that she saw S-N- push, insult, and swear at the petitioner. According to Ms. [REDACTED] S-N- has bipolar disorder and problems with anger.

In his January 28, 2008 letter, [REDACTED] stated that he saw the damage that S-N- did to the petitioner's car in early 2005. He stated that when he approached S-N- to ask her about what had happened, she used very disrespectful language toward him that he will not repeat.

The director found the testimony of record insufficient and, on May 23, 2008, denied the petition. The director stated that although S-N- may have had difficulty controlling her anger, the record had failed

to establish that her anger was directed at the petitioner in a manner that caused him physical harm, or rose to the level of extreme cruelty.

On appeal, the petitioner submits another self-affidavit. In his July 15, 2008 affidavit, the petitioner states that S-N- and her brother were involved in drugs. He also stated that it was S-N- that sent her brother to steal his car, and that she has shot people in the past.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition. First, the AAO incorporates here its previous discussion of the inconsistencies between the petitioner's testimony and the evidence of record, which undermines the credibility of his testimony. Nor is it clear that the affiants who submitted testimony into the record personally witnessed incidents of physical abuse. Second, although the AAO does not dispute that S-N-'s behavior as described by the petitioner was unkind and inconsiderate, the petitioner has failed to establish that her actions 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. Nor has the petitioner established that S-N-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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

The third issue on appeal is whether the petitioner has established that he married S-N- in good faith. The AAO agrees. The AAO first notes the petitioner's failure to establish that he shared a joint residence with S-N-. Second, the AAO incorporates here its previous discussions with regard to the inconsistencies between the petitioner's testimony and other documentation in the record of proceeding, which undermines the credibility of that testimony.

Further, even if the petitioner had established that he and S-N- had shared a joint residence, and there were no questions with regard to the credibility of his evidence, the AAO would still decline to enter a finding that the petitioner had made an adequate demonstration that he had entered into marriage with S-N- in good faith.

The record lacks critical information with regard to the intentions of the petitioner at the time he entered into marriage with S-N-, beyond the statement that he met S-N- in December 2003 through her cousin, who was his co-worker. For example, there is no information regarding the couple's first meeting; the petitioner's first impressions of S-N-; their decision to date; their first date; their

courtship; their decision to marry; and their wedding. He provides no information on such topics as how cultural differences were bridged, or how/if, the fact that S-N- already had children factored into the relationship. 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 S-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that he shared a joint residence with S-N-; that S-N- subjected him to battery or extreme cruelty; or that he married S-N- in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

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.