

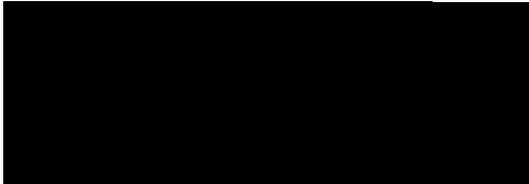
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

MAY 21 2009

FILE: [REDACTED]
EAC 07 061 50459

Office: VERMONT SERVICE CENTER

Date:

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.

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 the petitioner's failure to establish that she entered into the marriage in good faith.

On appeal, counsel submits a brief and previously provided documentation

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. Beyond the director's decision, the AAO finds that the petitioner did not establish that she jointly resided with the abusive spouse. Nonetheless, the case 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) that was in effect at the time the petition was filed.

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.

* * *

(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.

* * *

(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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria. She entered the United States on or about September 25, 2000. The record includes a marriage license showing the petitioner married R-J-¹ a United States citizen on January 22, 2002 in the State of Texas. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on February 15, 2002 that was approved on March 9, 2004. On October 13, 2006, the district director issued a Notice of Intent to Revoke, (NOIR) the Form I-130. After receiving no response to the NOIR, the district director revoked the Form I-130 on January 30, 2007. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 26, 2006. The petitioner noted on the Form I-360 that she resided with R-J- from January 2002 to March 30, 2006. The director issued a request for further evidence (RFE) in this matter on September 17, 2007. Upon review of the evidence in the record the director denied the petition on February 6, 2008, finding that the petitioner had not established that she entered into the marriage in good faith.

Good Faith Entry into Marriage

The petitioner initially provided a November 27, 2006 personal statement indicating that she met R-J- at a friend's party on July 21, 2001, that they exchanged phone numbers, and started dating. The petitioner indicated that they went to movies, parties, and restaurants and after dating for six

¹ Name withheld to protect the individual's identity.

months, R-J- proposed and she informed her family and after their approval she and R-J- married. The petitioner provided photocopies of several photographs showing the petitioner and R-J- together on different occasions.

The petitioner also provided affidavits from her mother, her sister, [REDACTED], and [REDACTED]. The affiants declared that they knew the couple and knew of marital problems but the affiants did not provide information relating to the petitioner's intent upon entering the marriage. In [REDACTED]'s affidavit, she declares that on or about March 26, 2006, when she visited the petitioner, she witnessed R-J- destroying some of the petitioner's personal documents such as wedding pictures, clothes, and other things, during an argument.

The petitioner also provided a November 22, 2006 report prepared by a private investigator. The investigator declared that the petitioner had indicated that she had resided jointly with R-J- at the [REDACTED] address and at the Wellington Park address until R-J- had moved out on or about March 30, 2006. The investigator also noted that a review of public records did not reveal a divorce decree between the petitioner and R-J- but that public records showed that R-J- appeared to be married to both the petitioner and another woman.

In response to the director's RFE, the petitioner provided a second sworn statement dated December 11, 2007. The petitioner stated: that she married her husband in good faith; that during their dating days, her husband seemed so loving; and that her husband made her believe he truly loved her and wanted to spend the rest of his life with her.

The record also included: telephone bills dated July 17, 2002, July 17, 2004, and August 17, 2004, addressed to the petitioner and R-J- at the Wilcrest Park address; a utility bill dated November 19, 2002 addressed to the petitioner and R-J- at the Wilcrest Park address; a telephone bill dated October 27, 2006 addressed to the petitioner and R-J- at the Wellington Park address; utility bills dated October 10, 2005 and September 12, 2006 addressed to the petitioner and R-J- at the Wellington Park address.

The record further included an Internal Revenue Service (IRS) computer copy of R-J-'s 2001 IRS Form 1040 showing his address on Sharpview Drive and a revised IRS Form 1040 for 2001 received by the IRS on August 15, 2002, showing R-J-'s address as on Wilcrest Park and that he is married filing jointly with the petitioner. It is unclear why R-J- would file a revised Form 1040 for the year 2001 claiming to be married to the petitioner when the marriage did not take place until January 22, 2002. The record further included an IRS Form W-2, Wage and Tax Statement for 2003 showing R-J-'s address on Wilcrest Park in Houston, Texas; an IRS Form W-2, for the petitioner's 2003 wages showing her address on Wilcrest Park in Houston, Texas; and a signed but not certified IRS Form 1040 for 2003 showing the petitioner and R-J- married and filing jointly with an address on Wilcrest Park.

On appeal, counsel for the petitioner asserts that the affidavits provided, the petitioner's personal statements, the investigative report, the photographs, and the bills that the petitioner could salvage from R-J-'s destruction of documents show that the petitioner entered into the marriage in good faith. Counsel also notes the approval of the Form I-130.

Upon review of the information in the record, the AAO does not find the petitioner's statements probative. The petitioner's general statements lack significant detail regarding her interactions with R-J-. Her statements do not provide the detail necessary to ascertain the truthfulness of her statements regarding her courtship with R-J-. Similarly, the statements provided on her behalf are general in nature and provide no probative details regarding the affiants' observations of the petitioner's allegedly good faith entry into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged *bona fides* of the couple's marital relationship. The general statements provided do not assist in establishing that the petitioner's intent upon marrying R-J- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage.

In addition, the petitioner has submitted evidence that is inconsistent and thus undermines her claim that she married R-J- in good faith. The AAO notes specifically the revised IRS Form 1040 for 2001. It appears that the petitioner and R-J- revised the Form 1040 filed for 2001 to show the couple as married and living at an address on Wilcrest Park; although the petitioner and R-J- did not marry until January 22, 2002. The intent to deceive the IRS regarding a joint relationship in 2001 undermines the petitioner's credibility and casts doubt on her testimony. The AAO also observes that the approval of the Form I-130 was revoked on January 30, 2006 based on evidence that the marriage was entered into fraudulently. The revocation of the Form I-130, rather than establishing the good faith intent to marry, raises additional questions regarding the legitimacy of the marriage.

The AAO has also reviewed the photographs submitted and finds that the photographs only establish that the petitioner and R-J- were together on several occasions; the photographs do not establish the petitioner's good faith intent upon entering into the marriage. Likewise, the addition of an individual to a utility account is insufficient to establish the petitioner's intent in this matter. The AAO observes that R-J-'s name continued to appear on the petitioner's utility accounts after R-J- allegedly moved out of the marital home in March 2006. Utility bills and IRS Forms are not probative in this matter, in light of the willingness of the petitioner to misrepresent her marital status to the IRS, as discussed above.

The AAO finds there are no probative, consistent details about the petitioner's initial relationship with R-J- and the subsequent interactions with R-J- that allow a conclusion that the petitioner entered into the marriage in good faith. The record lacks credible detailed information sufficient to establish the good faith intent of the petitioner in entering the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO observes that the petitioner has not established that she resided with R-J-. The AAO acknowledges the utility bills that include R-J-'s name and the petitioner's claim that the R-J- often destroyed documentation. However, utility bills in this instance are insufficient to establish that the petitioner and R-J- established a residence together. Although the petitioner provided affidavits from friends and others indicating that she resided with R-J-, the affiants, as well as the petitioner, do not provide any probative testimonial evidence regarding the claimed residences with R-J- during the marriage, such as a description of the residence(s) and the location(s), their shared belongings, or any other information which demonstrates a joint residence. As the petitioner's information submitted to the IRS is not consistent with her testimony and other independent evidence, the IRS Forms also do not establish that the petitioner resided with R-J-. Upon review of all the information in the record, the petitioner has not provided probative consistent evidence demonstrating that she resided with R-J-.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Despite the petitioner's ineligibility based on the present record, this matter 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) that was in effect when the petition was filed. On remand, the director should address all the 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.