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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 19 2010**

EAC 08 025 50552

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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).

Perry Rhew

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 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 May 1, 2009, determining: that the petitioner had not established a qualifying relationship with a United States citizen or lawful permanent resident; that the petitioner had not established eligibility for immigrant classification based on a qualifying relationship; that the petitioner had not established that he had been battered or subjected to extreme cruelty by his naturalized United States citizen spouse; and that the petitioner had not established that he married his United States citizen spouse in good faith.

On appeal, counsel submits articles and documentation relating to customary marriage in Nigeria. The petitioner's statement on the Form I-290B, Notice of Appeal, reads:

I had a Customary Marriage in Nigeria. I had a Customary Divorce in Nigeria. As Exhibits A B C D demonstrate Customary Court has jurisdiction to dissolve a Customary Marriage.

The record on appeal does not address the director's decision determining that the petitioner had not established that he had been subjected battery or extreme cruelty by his spouse and that he had not entered into the marriage in good faith.

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 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:

(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.

(ii) *Relationship.* A self-petition file 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

* * *

(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 who entered the United States on March 6, 2007 on a B-1 visa. The petitioner married A-A,¹ the claimed abusive spouse on March 20, 2007 in the State of Minnesota. The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that the couple resided together from March 20, 2007 to October 12, 2007. The petitioner also indicated on the Form I-360 that he had previously been married. The petitioner filed the Form I-360 that is the subject of this appeal on October 29, 2007. The director issued a request for further evidence (RFE) on February 13, 2009. Upon review of the response to the RFE the director denied the petition on May 1, 2009.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The petitioner initially provided a photocopy of a document with the heading "Judiciary." The heading also showed that the document originated from the "Customary Court of Oyo State of Nigeria before the president and a member (of the Customary Court). The document further showed that the suit number (042/2007) is between the petitioner in this matter and [REDACTED] and that the claim is "Divorce on Repayment of N30.00 Dowry." The judgment, as set out in the document, indicated that the marriage between the two parties is dissolved immediately and that the seven-month old child of the marriage would remain in the custody of [REDACTED], the child's mother. The document is signed February 16, 2007 by both the president and a member of the Customary Court and the seal and signature of the Higher Court Registrar of the Customary Court is placed on the second page of the

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

document.

In the petitioner's March 12, 2009 statement in response to the director's RFE, the petitioner stated:

My prior marriage was a traditional marriage which was conducted by payment of dowry and introduction of both family members when my prior spouse got pregnant for me. It is a form of traditional engagement that is performed according to our customs and traditions. We did not proceed to get married according to English law or statutes (legal marriage) which will require the High Court or Magistrate to grant a divorce. The Customary Court is the Court that has jurisdiction over traditional or customary marriage or one may choose not to do anything about and break the engagement.

My prior spouse took the step of breaking the traditional engagement when I got my visa and she saw that I was given two years despite explaining to her that it does not mean that one will travel two years at a stretch. She insisted that since we are yet to proceed to legal marriage, we should also not be binded [sic] by tradition.

Upon review of the divorce decree issued in Nigeria, the director determined that the proper documentation for the dissolution of a civil marriage is a "Decree Absolute" issued by the High Court granting the divorce. It does not appear the director considered whether the petitioner had submitted sufficient evidence to determine that his prior foreign marriage was a customary marriage and whether the judgment issued by the customary court was sufficient to dissolve a "customary marriage."

Upon review of the articles and documentation submitted on appeal, as well as information on the Nigeria Reciprocity Schedule, the AAO finds that in Nigeria marriage under native law and custom can only be dissolved by the customary court having jurisdiction over the area where the marriage took place. Further, that the proper documentation for a customary divorce is a certificate of divorce rendered by a customary court. In this matter, the petitioner has provided sufficient evidence of the existence of customary marriages in Nigeria and has provided evidence of a customary divorce certificate. Thus, the petitioner has provided sufficient evidence that his prior marriage had been terminated and that he was eligible to legally marry A-A-.

The petitioner has established that he has a qualifying relationship with A-A-, his U.S. citizen spouse, pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act; and similarly that he is eligible for immediate relative classification based on his relationship with A-A-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The AAO will withdraw the director's decision as it relates to these two issues.

Battery or Extreme Cruelty and Good Faith Marriage

Neither the petitioner nor counsel submits any evidence or identifies specifically any erroneous conclusions of law or statements of fact made by the director on the issues of the petitioner's failure to establish that he was subjected to battery or extreme cruelty and the petitioner's failure to establish

that he entered into the marriage in good faith. The AAO has reviewed the director's decision in this regard and finds that the director cogently articulated the reasons why the petitioner failed to establish these two essential elements for this benefit. As the AAO is without further evidence or argument to evaluate regarding these issues, the director's decision on these two issues is affirmed. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act and has not established good faith entry into the marriage as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.