

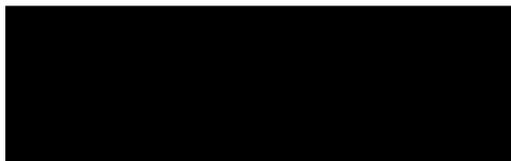
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **JAN 20 2011**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification pursuant to 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 her United States citizen spouse.

On April 20, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. citizen.

The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and asserts that the divorce judgment issued in Nigeria terminating her marriage was not recognized.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria. She married O-A-¹ on April 20, 1995 in Nigeria. In 1999 her husband won the diversity green card lottery and she entered the United States as the holder of a lawful permanent resident card with the couple's ten-month-old son in the same year. She returned to Nigeria with the couple's child nine months later, due to abuse allegedly perpetrated by O-A-². The petitioner filed for divorce from O-A- in Nigeria which was granted by the High Court of Lagos State in the Lagos Judicial Division, Nigeria on October 25, 2001. The Decree Nisi of Dissolution of the marriage became absolute on January 25, 2002. In the Divorce Decree, the Court awarded sole custody of the couple's child to the petitioner. The petitioner was paroled into the United States on August 6, 2006, at which time she was placed in immigration proceedings before an immigration judge to determine the status of her lawful permanent residence. On January 15, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a request for evidence (RFE) on January 26, 2009 and upon review of the record, including the petitioner's response to the RFE, denied the petition on April 20, 2010, determining that the petitioner had not established a qualifying relationship with the U.S. citizen. The petitioner submits a timely appeal.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with O-A- because her marriage to O-A- was terminated on October 25, 2001 and became final on January 25, 2002; thus, a qualifying relationship did not exist within two years of the petitioner's filing of the Form I-360.

On appeal, the petitioner references her motion to register the divorce documents from Nigeria which was denied by the Judge in the Juvenile and Domestic Relations District Court of Montgomery County, Virginia on February 27, 2009. The petitioner contends that as the Nigerian divorce was not validated by a U.S. Judge, and she has not re-married, she has established a qualifying relationship with the claimed abusive former spouse.

The AAO disagrees. The record in this matter also includes an Emergency Petition for Custody and Visitation filed by O-A- in Montgomery County, Virginia in February 2009 and documents dated February 27, 2009 relating to custody and visitation of the petitioner and O-A-'s child. The motion to which the petitioner refers, also dated February 27, 2009, simply indicated that the

¹ Name withheld to protect the individual's identity.

² O-A- later became a naturalized U.S. citizen.

petitioner's Motion to Register Foreign Order was denied. The record does not include sufficient information establishing why the motion was denied or whether the denied motion related solely to the custody and visitation rights of the couple's child. Regardless of the Virginia Commonwealth's district judge's order, the record includes the Decree Nisi of Dissolution of the petitioner's marriage to O-A- which became absolute on January 25, 2002 and was granted by the High Court of Lagos State in the Lagos Judicial Division, Nigeria. A divorce is valid under U.S. immigration law if valid under the laws of the foreign country or state granting the divorce. *Matter of Ma*, 15 I&N Dec. 70 (BIA 1974); *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). The record does not include any evidence that the Divorce Decree terminating the marriage is invalid. Thus, the petitioner has not established that she had a qualifying relationship with the claimed abusive former spouse when the Form I-360 petition was filed or that she has demonstrated a connection between the legal termination of the marriage within two years of filing the Form I-360 and battering or extreme cruelty by the United States citizen spouse as set out in section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Beyond the decision of the director, the petitioner has also failed to establish that she was eligible for immediate immigrant classification based on a qualifying relationship with a United States citizen spouse. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.