

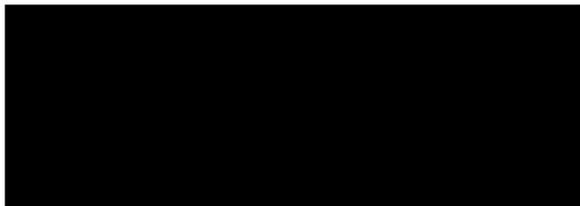
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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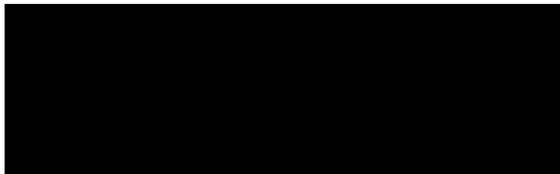
FILE: [Redacted] Office: VERMONT SERVICE CENTER

MAR 07 2011

IN RE: Petitioner: [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:**

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 and 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 his United States citizen spouse.

The director ultimately denied the petition, determining that the petitioner had not: established that he had been subjected to battery or extreme cruelty by the United States citizen spouse; established that he is a person of good moral character; or established that he entered into the marriage in good faith. The director also determined that the petitioner was barred from receiving benefits based on section 204(c) of the Act.

#### *Applicable Law and Regulations*

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 based on his or her relationship to the abusive spouse, 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 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.

(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.

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.

\* \* \*

(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Nigeria. He entered the United States on or about July 20, 1994 as a B-2 visitor. On November 20, 1996, the petitioner married Y-O-,<sup>1</sup> a United States citizen. On March 6, 1997, Y-O- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner and Y-O- were interviewed by legacy Immigration and Naturalization Services' (INS) adjudicators on November 14, 1997 and June 22, 1999. On March 22, 2000 the Form I-130 was denied based on discrepancies between the petitioner and Y-O-'s testimony as well as the lack of sufficient evidence to establish that the petitioner and Y-O- had entered into a bona fide marriage. On October 10, 2000, the petitioner was placed in immigration proceedings. On March 30, 2001, the marriage between the petitioner and Y-O- was dissolved. On April 25, 2001, the petitioner married L-H-,<sup>2</sup> the claimed abusive United States citizen spouse.

On July 31, 2001, L-H- filed a Form I-130 on the petitioner's behalf, but failed to disclose that the petitioner was in immigration proceedings and the Form I-130 was erroneously approved on August 29, 2001. On May 28, 2002, L-H- filed a second Form I-130 on the petitioner's behalf. The petitioner and L-H- were scheduled for a "Stokes" interview on September 8, 2004, to evaluate a bona fide marriage exemption request. On October 28, 2004, the Form I-130 was denied because the petitioner and L-H- had not provided sufficient testimonial or documentary evidence to establish

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

<sup>2</sup> Name withheld to protect the individual's identity.

by clear and convincing evidence that their marriage was a bona fide marriage. L-H- appealed the denial to the Board of Immigration Appeals (BIA) and subsequent to the BIA's decision, L-H- and the petitioner were scheduled for a [REDACTED] interview on September 10, 2008. On September 29, 2008, counsel for the petitioner informed the immigration court that L-H- did not appear with the petitioner for the September 10, 2008 [REDACTED] interview because the couple had been having marital problems. Counsel further informed the court that the petitioner had filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner's Form I-360 was received by United States Citizenship and Immigration Services (USCIS) on October 3, 2008. The petitioner noted on the Form I-360 that he had resided with L-H- until August 2008.

On December 7, 2009, the director issued a Notice of Intent to Deny (NOID) the petition, observing that the record showed that the petitioner had entered into a marriage with Y-O- to obtain immigration benefits; thus the petitioner was subject to section 204(c) of the Act. The director also observed that the record did not include criminal history clearances from each of the petitioner's previous residences. The director further observed that the record did not establish that the petitioner had been subjected to battery or extreme cruelty perpetrated by L-H-. The director noted the deficiencies in the record regarding these issues and requested that the petitioner provide additional evidence to overcome the grounds listed for denial. On January 8, 2010, the petitioner provided a rebuttal to the director's NOID; however, the rebuttal was not matched up with the petitioner's file. On June 17, 2010, the director denied the instant petition as the petitioner had not responded timely and thus the petition was considered abandoned. On July 22, 2010, counsel for the petitioner filed a motion to reopen the matter for the consideration of the record including the evidence submitted in response to the NOID. On September 23, 2010, the director reopened the matter and after considering the evidence of record, determined that the petitioner had not overcome the grounds stated in the NOID.<sup>3</sup> Counsel timely submits a Form I-290B, Notice of Appeal or Motion, and his statement and previously submitted documentation in support of the appeal.

### *Abuse*

The petitioner initially did not submit a statement indicating that he had been subjected to battery or extreme cruelty perpetrated by L-H-. The initial record included an undated report prepared by [REDACTED] licensed mental health counselor, based on his September 5, 2008 evaluation of the petitioner. Mr. [REDACTED] noted that the petitioner reported that towards the second half of his marriage, L-H- started complaining, said she was bored, and told him that she was tired of him. Mr. [REDACTED] also noted that the petitioner indicated that L-H- became inattentive and emotionally distant and verbally aggressive by calling him names. Mr. [REDACTED] noted further that the petitioner stated that when he complained about L-H-'s behavior, she

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<sup>3</sup> Although the director stated that "the grounds for denial have not been overcome," the AAO considers that language to relate to the grounds stated in the NOID, as the petition was initially denied due to abandonment. The director's reference to the denial letter did not prejudice the petitioner, as the director considered the evidence that the petitioner had submitted when deciding the motion and explained why such evidence failed to establish the petitioner's good moral character and the issue of battery or extreme cruelty. However, as the director did not fully address the issue regarding the petitioner's failure to establish a bona fide marriage with Y-O- and the resulting applicability of section 204(c), the director's reference to this ground of denial is withdrawn.

reacted with anger, throwing things around, yelling at him, and threatening to leave. The petitioner reported to Mr. [REDACTED] that L-H- left without any note or acknowledgment several weeks prior to the petitioner's evaluation. Mr. [REDACTED] found, based on the petitioner's reporting, that the petitioner experienced psychological/emotional abuse of adult, abandonment, and adjustment disorder with mixed anxiety and depressed mood. Mr. [REDACTED] indicated the petitioner's psychological stressors as problems related to the legal system as an immigration petitioner, exposure to spousal abuse and abandonment, potential deportation from the United States with loss of job, housing, and means of support.

In response to the director's NOID on this issue, the petitioner provided a statement dated January 8, 2010. The petitioner stated that at some point L-H- began to change and she would go out to nightclubs without his knowledge or consent. The petitioner indicated that L-H- forced him to buy her tickets to Pittsburg, and that when he did not do the things that she wanted she would isolate herself. The petitioner noted that when he asked her where she had been, she would become aggravated and start yelling, cursing, and throwing things. The petitioner reported that after L-H- left, he tried to find her and when he did she told him that she wanted to return because he had an interview with immigration but that she needed money. The petitioner indicated further that she did not return even after he had sent her some money.

The director, based upon this information, determined that the petitioner had not provided evidence demonstrating that he had been subjected to battery or extreme cruelty. Neither counsel nor the petitioner provides additional evidence addressing this issue on appeal.

We find no error in the director's assessment of the evidence. The petitioner in this matter does not provide detailed, probative statements regarding the claimed abusive behavior of his spouse. Because the petitioner's statements are critical in establishing extreme cruelty or battery, his statement must include sufficient detail of specific events and incidents to result in a conclusion that he suffered such abuse. In this matter, the petitioner does not provide the requisite probative detail describing any specific event or incident of battery or of extreme cruelty. The petitioner does not include any information either to Mr. [REDACTED] or USCIS that indicates that his spouse's actions, including yelling, cursing, name calling, and throwing things around, was accompanied by any coercive actions or threats of harm or that her actions were aimed at insuring dominance or control over him. The record is simply insufficient in this regard.

Upon review of the evaluation prepared by Mr. [REDACTED], Mr. [REDACTED] does not provide examples of the causal relationship of specific abuse that is consistently detailed to his conclusion that the petitioner experienced psychological or emotional abuse perpetrated by L-H-. Mr. [REDACTED] does not describe any specific incident reported by the petitioner that constitutes battery or extreme cruelty as those terms are set out in the statute and regulation. The petitioner's spouse's abandonment of the marriage is not a form of extreme cruelty as described in this matter. Similarly, the petitioner's description of his former spouse's behavior as reported to Mr. [REDACTED] does not constitute a form of extreme cruelty as defined in the statute and regulation.

Upon review of the petitioner's testimony and the evaluation, the petitioner has failed to establish that his spouse's actions were comparable to the types of 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 his spouse's behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the petitioner's testimony is insufficient to establish that he was subjected to battery or extreme cruelty perpetrated by L-H-

### *Good Moral Character*

In the director's NOID, the director notified the petitioner that although the record included a good conduct certificate from the City of New York Police Department, the petitioner indicated that he currently resided in New Jersey. The director requested that the petitioner provide a criminal history clearance from New Jersey. In response, the petitioner provided a December 17, 2009 report from the State of New Jersey indicating that a search of the records had revealed that a criminal history did exist for the petitioner. The accompanying record showed that the petitioner had been arrested on March 20, 2004 and charged with bail jumping, a violation of New Jersey statutes 2C:29-7 and that a disposition of the matter had occurred on June 17, 2008. The record did not include a record of the disposition. Counsel for the petitioner noted that he had spoken to the Municipal Court Clerk of New Jersey who confirmed that the petitioner had been involved in traffic violations and asserted that the traffic violations that occurred in 2004 should not be a basis for determining that the petitioner lacks good moral character.

In the director's September 23, 2010 decision, the director noted that the petitioner had submitted information showing that he had been charged with traffic violations. The director determined without further discussion, that the information submitted was insufficient to overcome the grounds listed in the NOID.

Upon review of the information in the record on the issue of good moral character, the information submitted is not sufficient to establish that the petitioner is a person of good moral character. Although the petitioner testified that the matter had been resolved in July 2004, and involved only traffic violations, the New Jersey criminal history report shows that there is an unresolved matter regarding bail jumping. The record does not include clarifying information regarding this charge.

### *Conclusion*

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.