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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**



PUBLIC COPY



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Date: **MAY 30 2011** Office: VERMONT SERVICE CENTER 

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:

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 the \$630 fee. 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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will remain denied.

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.

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on June 23, 2008, finding that the petitioner failed to establish that she had resided with her U.S. citizen spouse, that she is a person of good moral character, and that she entered into the marriage in good faith. In the AAO's March 12, 2010 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite joint residence, good moral character, and good-faith entry into the marriage. The AAO also found beyond the decision of the director that the petitioner failed to establish that she had been subjected to battery or extreme cruelty by her spouse. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on March 26, 2010, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite joint residence, abuse, good moral character, and good-faith entry into the marriage. In response to the NOID, the petitioner's counsel submitted additional evidence, including the

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

following: a Response for Criminal Record Check dated April 14, 2010, from the Pennsylvania State Police, finding no criminal record for the petitioner; affidavits from the petitioner's uncle and friends; and copies of documentation already in the record. The director denied the petition on February 3, 2011, finding that the petitioner failed to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with director's ultimate determination, but withdraw his finding that the petitioner is a person of good moral character. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. In response to the director's March 26, 2010 NOID, the petitioner submitted the additional documentation listed above, which, the director concluded, overcame part of his objections, namely, that the petitioner is a person of good moral character. The director denied the petition, however, because the petitioner failed to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The AAO disagrees with the director's finding that, with the submission of the Response for Criminal Record Check dated April 14, 2010, from the Pennsylvania State Police, finding no criminal record for the petitioner, the petitioner has established that she is a person of good moral character. It is noted that the criminal record check was based, in part, on the petitioner's name, [REDACTED] and her maiden name and/or alias, [REDACTED]. The criminal record check, however, did not include the petitioner's name as it appears on her Nigerian passport, [REDACTED]. In addition, the criminal record check was based, in part, on the social security number, [REDACTED] which is different from the social security number that the petitioner provided in Part 3 of the instant petition. As the record contains no explanation for these discrepancies/inconsistencies, the petitioner has failed to establish that she is a person of good moral character. The AAO therefore withdraws the director's determination regarding the petitioner's good moral character.

It is also noted that the AAO found in its previous decision that the petitioner's general statement and the psychiatric evaluation were insufficient to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The additional affidavits and statements submitted in response to the NOID also fail to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The petitioner's uncle, [REDACTED] states, in part, that he allowed the petitioner to stay with him after she confided in him that her husband was very abusive. The petitioner's friend, [REDACTED], submits a second affidavit, stating, in part, that the petitioner told her that her husband hit her and left her for days without her knowing his whereabouts. This information conflicts with [REDACTED] first affidavit, submitted in response to the director's request for additional evidence, in which she stated that the petitioner refused to discuss her husband with her and that when she asked questions, the petitioner changed the subject. The record contains no explanation for this inconsistency. The petitioner's friend, [REDACTED] states, in part, that the petitioner told her that her husband treated her badly and then she started to cry. The petitioner's friend, [REDACTED] states, in part, that she is involved in church counseling and that has counseled the petitioner over the years because of her emotional distress. The petitioner's friends, [REDACTED] and [REDACTED] attest to the

petitioner's integrity and moral stability. A review of the affidavits and statements from the petitioner's uncle and friends in their totality finds that they are general and provide no specific details to establish the requisite joint residence, abuse, and good-faith entry into the marriage. Moreover, as discussed above, [REDACTED] affidavits are inconsistent. Accordingly, the petitioner's additional evidence submitted in response to the director's NOID failed to overcome the aforementioned grounds for denial. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the reasons stated above, 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 February 3, 2011 decision of the director is affirmed and the petition remains denied.

ORDER: The director's decision of February 3, 2011 is affirmed. The petition remains denied.