

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



B9

DATE: **DEC 17 2012** OFFICE: VERMONT SERVICE CENTER

FILE:

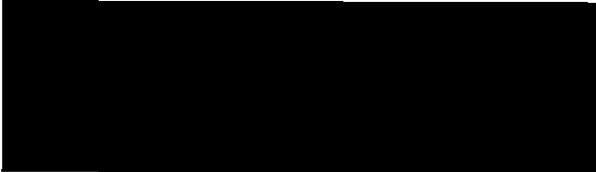


IN RE: Self-Petitioner:



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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director), revoked approval of the immigrant visa petition after properly notifying the petitioner 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 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 citizen of the United States.

The director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish a qualifying relationship with her U.S. citizen husband and that she was eligible for immigrant classification based on the said relationship. The director also determined that the record did not establish that the petitioner resided with her former spouse, was battered or subjected to extreme cruelty by her former spouse, or that she married her former spouse in good faith. On appeal, counsel submits a brief and additional testimonial and documentary evidence.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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, the following:

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 explicated 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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 . . . 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

(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.

Facts and Procedural History

The petitioner is a citizen of Nigeria who last entered the United States on November 2, 2002, as a nonimmigrant visitor. The petitioner married [REDACTED]¹ a U.S. citizen, on December 27, 2004, in Wisconsin. She filed the instant Form I-360 on March 12, 2007 and it was approved on January 9, 2008.

On December 2, 2009, the petitioner appeared at the Chicago, Illinois Field Office, in connection with the adjustment of status application she filed based upon the approved Form I-360.² During that interview, questions arose regarding the petitioner's ability to have legally entered into marriage with [REDACTED]. Specifically, the petitioner disclosed in a sworn statement that although she had previously indicated that her marriage to [REDACTED] was her first marriage, in fact, she had been married before in Nigeria. When the petitioner was asked if she had ever done anything to annul that marriage or terminate the marriage while in Nigeria, she responded, "no, I wasn't able to."

The director issued a Notice of Intent to Revoke (NOIR) on November 23, 2011, and notified the petitioner that because the record indicated that there were contradictions regarding the validity of the petitioner's second marriage and because she had previously claimed that she obtained a visa by fraud, her testimony lacked credibility. The director determined that there was insufficient evidence to show that the petitioner had a qualifying relationship with her former spouse or that she was eligible for immigrant classification as a result of that relationship; that she resided with and married her ex-

¹ Name withheld to protect individual's identity.

² See Form I-485, Application to Register Permanent Residence or Adjust Status, [REDACTED] filed June 25, 2009.

husband in good faith; that her ex-husband subjected her to battery or extreme cruelty; or that she was a person of good moral character. The petitioner, through counsel, submitted a timely response and provided further evidence. The director found that the additional evidence established that the petitioner is a person of good moral character, but that the petitioner's response was insufficient to overcome the other proposed grounds for revocation, and he revoked approval of the petition on June 14, 2012.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. On appeal, the petitioner has established that she had a qualifying relationship and was eligible for immediate relative classification based on such a relationship. The director's decision to the contrary will be withdrawn. However, counsel's evidence and claims on appeal do not overcome the director's determination that the petitioner did not enter into the marriage in good faith, reside with her ex-husband, or that her ex-husband subjected her to battery or extreme cruelty. Thus, the appeal will be dismissed.

Qualifying Relationship

The record of the petitioner's sworn statement in which she stated that she was married in Nigeria and had not been able to annul or terminate her marriage, along with the petitioner's admission that she obtained a visa by fraud, provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to provide sufficient evidence that she had a qualifying relationship with [REDACTED]. On appeal, the petitioner submits a copy of her divorce certificate pertaining to her first marriage in Nigeria, which was legally terminated on September 9, 2002 prior to her marriage to [REDACTED] in 2004. This document, along with the two letters submitted below that attest to the termination of the petitioner's first marriage, are sufficient to overcome the director's determination that the petitioner did not have a qualifying relationship with [REDACTED] and that she was ineligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first affidavit, dated December 11, 2011, the petitioner stated that she met her ex-husband at her sister's church. He showed interest in her, and when she went back to Nigeria they kept in touch over the telephone. When she returned to the United States, her ex-husband asked her not to return to Nigeria and after dating for two years [REDACTED] proposed. The petitioner reports that they married on December 27, 2004 and they were happy and in love at first, but then things began to change. In her two subsequent declarations, the petitioner does not discuss anything but the alleged abuse. The petitioner did not describe in probative detail how she met her former husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted letters from friends and acquaintances who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information

regarding the petitioner's good faith in entering the relationship. In her affidavit, the petitioner's sister, [REDACTED] stated that after two years of courtship the petitioner and her former spouse married and that they loved one another. She recalled that the petitioner and her ex-husband attended a birthday party and a wedding together and that they liked to go shopping at the outlet stores. [REDACTED] stated that she "[knew] for a fact that [REDACTED] and [REDACTED] married for love," but failed to articulate the basis for that knowledge. In the letter she subsequently wrote, [REDACTED] again asserted that the petitioner and her ex-husband were in love, but she did not provide any probative details of her observations or the petitioner's intentions in entering the marriage. The petitioner's aunt, [REDACTED] stated that she was a witness at the petitioner and her ex-husband's wedding. She also stated that on her trips to Chicago to visit them she noticed how in love they were, but she does not provide any probative details to support that conclusion. The petitioner's friend, [REDACTED] briefly stated that he had personal knowledge of their marriage and strong relationship and that they visited his house, but he also failed to provide any explanation of the basis for his purported knowledge of the relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her former husband in good faith.

The director also accurately assessed the other relevant documents submitted below. The petitioner submitted eleven undated photographs of herself and her ex-husband taken on three, unidentified occasions. The photographs are not accompanied by any explanation of their significance. The petitioner submitted a bank statement from Bank Financial for the period from October 22, 2005 to November 21, 2005 which lists both her and her ex-husband's names, but which was sent to the petitioner's address where she lived alone – without her former husband. It appears that the address was changed immediately after their November 15, 2005, immigration interview as reflected in the second statement from Bank Financial. The other statements submitted from an unnamed bank include both the petitioner and her ex-husband's names even during the period after the petitioner and her former husband separated. The petitioner also failed to explain why the Illinois identification card she presented during her November 15, 2005 immigration interview listed her address as on Marigold Drive when she claimed to have been living with her ex-husband on Hemlock Street since December 2004. On appeal, the petitioner does not submit any evidence relevant to whether she entered into her marriage in good faith.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. In her affidavits, the petitioner does not describe her intentions in marrying her ex-husband or their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. None of the petitioner's relatives or acquaintances discuss in probative detail their observations of the petitioner's interactions with or feelings for her former husband during their courtship or marriage (apart from the alleged abuse) or otherwise establish their personal knowledge of the relationship. The relevant documents submitted are insufficient to show that the petitioner entered into the marriage in good faith. Counsel's argument that the applicant "grew up in a culture where wives have to listen and follow their husbands' instructions" and that the petitioner did not question her ex-husband is not relevant to, nor does it show that, the petitioner entered the marriage in good faith. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with her ex-husband. On the Form I-360, the petitioner stated that she lived with her former husband from December 2004 until June 2006 and that their last joint address was on Hemlock Street in Park Forest, Illinois. In her statements, the petitioner does not describe their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends do not describe in probative detail any visit to her and her former husband's residence. The other relevant documents submitted were insufficient to show joint residence, as discussed in the preceding section. In her appeal brief, counsel explains that the petitioner resided with her ex-husband at some point, but also lived separately from him while they were married, as is customary in Nigerian culture. While counsel offers a timeline and explanations of the various addresses where the petitioner has resided since her arrival in the United States, no additional evidence was submitted and the petitioner herself does not attest to her shared residence with her former husband. Accordingly, the record does not establish that the petitioner resided with her former husband as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's ex-husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In her first declaration, the petitioner recounted that her former husband called her names, called her for sex whenever he wanted, and threatened to "call immigration" on the petitioner. The petitioner stated that her ex-husband "became violent," but did not provide substantive information regarding any specific incidents of battery. In her second statement, the petitioner indicated that her ex-husband would scream and shout at her and that he was demanding sexually. She again stated that he would threaten her but she did not describe any specific threats in probative detail. The petitioner does not describe battery or behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's relatives attested to her troubled marriage, but their statements also fail to demonstrate that the petitioner's former husband subjected her to battery or extreme cruelty. In her statements, [REDACTED] recounted that the petitioner's ex-husband had a vasectomy he did not tell the petitioner about and that he mistreated her sexually, but she failed to describe any specific incidents of battery or extreme cruelty. Similarly, [REDACTED] described how the petitioner told her that her former husband had a vasectomy and was unwilling to get it reversed, and that he was "verbally abusive" towards her, but she failed to discuss any incidents of verbal abuse or provide other probative information. The statements submitted do not describe in probative detail any specific incidents of battery or extreme cruelty against the petitioner that the authors witnessed or otherwise explain the basis for their knowledge of the claimed abuse.

The record also contains a letter and a report from a counselor, [REDACTED] who met with the petitioner on four occasions. The counselor reported that the petitioner told her that her ex-husband screamed at her, called her names, and told her that she was worthless. The petitioner reported that her ex-husband

would “use her illegal status as a threat.” The counselor also recounted that the petitioner caught another woman in their home and that the petitioner’s ex-husband had a vasectomy that he did not immediately tell her about. The counselor reported that the petitioner’s former spouse threatened to “hurt her on multiple occasions.” However, the petitioner herself does not mention this threat in any of her affidavits. The counselor made no mention of any sexual abuse. The counselor noted that the petitioner “is very sad and says she feels shocked, hurt, depressed and deceived.” The report repeated some of the petitioner’s claims but did not discuss any particular incidents of abuse in probative detail. Similarly, the letter from the petitioner’s family law attorney states that the petitioner’s ex-husband “made broad threats about the consequences should she defend herself or seek any relief in divorce court,” but does not describe the threats or any incidents of abuse in probative detail.

The director correctly concluded that the relevant evidence submitted below did not establish that the petitioner’s former husband subjected her to battery or extreme cruelty. On appeal, the petitioner submits an additional affidavit. In her third statement, the petitioner indicated that her former husband belittled her, did not tell her that he had a vasectomy, and made her engage in sexual relations she found uncomfortable before their immigration interview. The petitioner stated that her ex-husband said that he would not sign any more immigration papers for her after she “created such a scene” when she discovered that her former spouse had another woman over at their apartment. The petitioner’s statements are insufficient, however, to demonstrate that her former husband subjected her to actual or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she had a qualifying relationship with her former husband and was eligible for immediate relative classification based on that relationship, and the director’s decision to the contrary will be withdrawn. However, the petitioner has failed to overcome the director’s determinations that she did not enter into the marriage in good faith, that she resided with her ex-husband, or that her former spouse subjected her to battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met that burden and the appeal will be dismissed. Approval of the petition will remain revoked.

ORDER: The appeal is dismissed.