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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



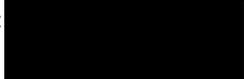
U.S. Citizenship
and Immigration
Services



B9

DATE: **MAR 26 2012**

Office: VERMONT SERVICE CENTER

File: 

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:

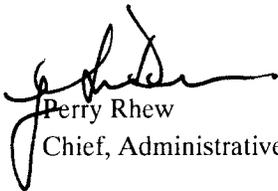
SELF-REPRESENTED

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 will remain 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 a United States citizen.

The director determined that the petitioner had not established she had jointly resided with the United States Citizen (USC) spouse or she had entered into the marriage in good faith.¹ On appeal, the petitioner submits a statement and additional documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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:

(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.

* * *

¹ Although the director noted that the petitioner had also failed to establish requirement “number 5” which concerns the issue of battery or extreme cruelty perpetrated by the petitioner’s former spouse, the director did not elaborate on this issue in the body of the decision. Thus, the director’s reference to “number 5” appears to be a typographical error.

(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 set forth 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.

* * *

(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.

* * *

(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 native of Nigeria who claims she entered the United States on or about November 27, 2001 as a nonimmigrant. She married N-O-² the claimed abusive United States citizen, on July 10, 2009.³ The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on May 10, 2010. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the

² Name withheld to protect the individual's identity.

³ The record includes a judgment of annulment dated November 17, 2010 which was served on the petitioner on December 16, 2010.

totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established she had jointly resided with the USC spouse or she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and her personal statement, statements from two individuals, photocopies of documents concerning property in Nigeria, photographs of the petitioner's apartment, and two cancelled checks sent to the Internal Revenue Service (IRS) and U.S. Treasury from the petitioner's business account.

Joint Residence

The director in this matter pointed out the deficiencies in the evidence, including the documentary evidence submitted by the petitioner and the statements submitted by the petitioner and others on her behalf. The AAO observes that the petitioner indicated in her December 15, 2010 statement that she moved into her former spouse's apartment on July 12, 2009 and left on October 30, 2009. She noted in her previous statement that she kept her apartment because her former's spouse's apartment was too small to accommodate her daughter and that both she and her daughter worked out of her apartment. In her personal statement on appeal, she indicated that she moved into her former's husband's apartment on July 12, 2009 and moved out on October 20, 2009. She indicates that she was not on her former spouse's lease because he had signed the lease prior to her moving in with him. She asserts that the photographs submitted on appeal show that her business and her daughter's business take up a lot of space. In the June 21, 2011 statement of [REDACTED] the petitioner's daughter's boyfriend, [REDACTED] states that the petitioner once lived with her former spouse and that he would drop off and pick up the petitioner's daughter from this location. In the affidavit of [REDACTED], the affiant declares that she attended two dinner parties at the claimed joint residence and is a witness to the couple's living arrangements in Brooklyn.

Upon review of the evidence submitted on appeal, the petitioner has not overcome the director's determination that she failed to establish that she jointly resided with her former spouse at his residence. The petitioner's testimony is general and does not provide sufficient probative information to establish that the couple established a joint residence together at her former spouse's apartment. Her explanation regarding the reason she maintained her separate apartment during the marriage is insufficient to establish that she resided at her former husband's residence. Her testimony on appeal is simply deficient in this regard. In addition, we note an inconsistency in the petitioner's testimony regarding the date she allegedly moved out of her former spouse's apartment. A review of the affidavits submitted on her behalf also fails to establish the petitioner's joint residence with her former spouse. The affiants comment generally that they saw the petitioner in her former spouse's apartment but do not detail their knowledge of the petitioner's separate apartment or otherwise describe their observations of the petitioner's living arrangements. The photographs submitted are undated and fail to provide probative evidence that the petitioner jointly resided with her former spouse during the marriage.

Upon review of the petitioner's statements, the statements submitted on her behalf, and the totality of the record, the petitioner has not provided probative testimony establishing that she jointly resided with her former spouse. The record on appeal does not overcome the director's decision on this issue.

Good Faith Entry into Marriage

In the petitioner's statement appended to the petition, she indicated that she met her former spouse in 2003, that initially they were just good friends, but later he proposed and they had a small wedding. In her December 15, 2010 statement submitted in response to the director's RFE, the petitioner declared generally that she met her former spouse in August 2002 and that after the couple dated for two years N-O proposed to her and that they traveled to Nigeria in September 2004 to meet her family. The petitioner then notes that after several years of being together she and N-O were married on July 10, 2009. The petitioner also provided affidavits of others who testified generally of N-O's behavior toward the petitioner and other documentary evidence to show her good faith in entering into the marriage. The director discussed the deficiencies of the documentary evidence submitted as well as the deficiencies in the testimony submitted.

On appeal, the petitioner asserts that she was unable to provide other documentary evidence as her former spouse would not allow her access to other documents. She also disagrees with the director's characterization of the documentary evidence she previously submitted. The petitioner does not provide additional testimony regarding her initial relationship with her former spouse, their courtship, the decision to marry, and their shared experiences except as it relates to her claim of abuse.

The petitioner has not provided probative testimony that overcomes the deficiencies of the documentary evidence pointed out by the director. For example, the director noted that the petitioner had not provided a certified signed copy of the federal income tax return allegedly filed with the IRS for the 2009 year. On appeal, the petitioner does not provide a certified copy of the IRS Form 1040 or other evidence demonstrating that the return was actually filed with the IRS. The two cancelled checks provided on appeal do not demonstrate that the Form 1040 was actually filed. The documentary evidence provided on appeal regarding land allegedly purchased in Nigeria by the petitioner and N-O- does not assist in establishing the petitioner's intent when entering into the marriage. The statements submitted by [REDACTED] do not provide testimony of their observations of the interactions between the petitioner and N-O- sufficient to assist in ascertaining the petitioner's intent when entering into the marriage.

As noted above, the petitioner has not provided further testimony regarding her intent when entering into the marriage on appeal. She does not describe the couple's interactions during the courtship. She does not provide consistent testimony regarding the date she was introduced to her former spouse. She does not provide probative testimony regarding the decision to marry or their shared experiences prior to or subsequent to the marriage. The petitioner's testimony lacks probative, consistent detail that provides insight into her intentions when entering into the marriage. General statements are insufficient to establish intent in this regard. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not established that she jointly resided with the claimed abusive spouse or that

she entered into the marriage in good faith. 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.