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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



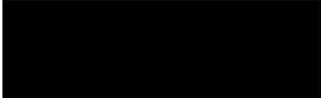
U.S. Citizenship
and Immigration
Services

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BA

DATE: **MAY 16 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)

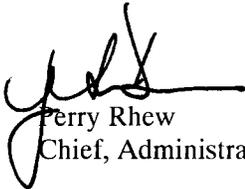
ON BEHALF OF PETITIONER:

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.

Thank you,


Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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.

The director denied the petition on the basis of his determination that the petitioner failed to establish: (1) that her husband subjected her to battery or extreme cruelty during their marriage; and (2) that she married him in good faith. On appeal, the petitioner submits a letter and additional evidence.

Applicable Law

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

- (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States on February 17, 2001. She married F-J-¹ a citizen of the United States, on August 9, 2002. The petitioner filed the instant Form I-360 on April 30, 2007. The director issued two subsequent requests for additional evidence, and the petitioner filed timely responses to both notices. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on May 4, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition. However, while we agree with the director's substantive grounds for denying this petition, the matter must be remanded for issuance of a notice of intent to deny (NOID) the petition in accordance with 8 C.F.R. § 204.2(c)(3)(ii) as in effect on the date this petition was filed.²

Battery or Extreme Cruelty

In her undated letter submitted below the petitioner claimed that F-J- was controlling and treated her like his slave; isolated her; was verbally and financially abusive; spread rumors about her; was unfaithful; and tried to sabotage her studies. However, her testimony was very general in nature and did not contain any detailed, probative accounts of specific incidents of abuse. It also contained an inconsistency, as the petitioner claimed that F-J- isolated her but also recounted borrowing money from her church, attending church services, and visiting her friends. The testimony from [REDACTED] submitted below was similarly vague: [REDACTED] did not describe any specific incidents of abuse perpetrated by F-J-, and although [REDACTED] claimed the petitioner complained about F-J-'s controlling behaviors and became passive and depressed, her description of the petitioner's mental state was very general. Nor did she describe any specific incidents of abuse.

The petitioner also submitted "Intake Notes" from [REDACTED] who diagnosed the petitioner with "Dysthymic Disorder, early onset (Principal)." However, [REDACTED] did not describe any specific instances of battery or extreme cruelty in probative detail.

The director's determination that the petitioner failed to establish that F-J-'s behavior constituted battery or extreme cruelty was based, in part, on his finding that the petitioner's testimony regarding her alleged isolation by F-J- contained inconsistencies and was therefore not credible. The petitioner's June 1, 2011 letter submitted on appeal deals primarily with these findings. The petitioner explains that her alleged isolation from friends and members of her family occurred over

¹ Name withheld to protect individual's identity.

² *See* 72 Fed. Reg. 19100 (April 17, 2007), wherein U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOID effective June 18, 2007, after this petition was filed.

a period of two years and that it was only after the passage of such a long period of time that she began reaching out to her church and her friends. While these claims are sufficient to resolve the inconsistencies highlighted by the director, the petitioner's assertions made on appeal do not overcome his ultimate determination that the petitioner failed to establish she was abused by F-J- during their marriage because she fails to describe any specific incidents of abuse in probative detail.

Mr. Nwafor does not describe any incidents of abuse in probative detail in his June 3, 2011 statement submitted on appeal, either. Although he attempts to describe the petitioner's state of mind during the period of time during which the alleged abuse occurred, [REDACTED] depiction of the petitioner's mental state lacks detailed, probative information.

Considered in the aggregate, the relevant evidence fails to establish that F-J- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The relevant evidence submitted by the petitioner below did not establish that she married F-J- in good faith. The testimony by the petitioner, [REDACTED] did not describe the couple's courtship, wedding ceremony, and shared residence and experiences in probative detail. The petitioner, [REDACTED] focused primarily upon the alleged abuse, and [REDACTED] provided no probative insight into the couple's relationship. The documentary evidence submitted below did not establish the petitioner's good-faith entry into the marriage, either. The photographs submitted by the petitioner were not dated or labeled, and establish only that F-J- and the petitioner were together on a few occasions. The residential lease agreement is of limited evidentiary value, as it was not signed by both individuals. The petitioner submitted a copy of her 2006 income tax return, but she filed it in the "married filing separately" category. The utility statements were all issued long after the couple married and provide no insight into the petitioner's intentions at the time she entered into the marriage. Although the bank statements indicate the couple shared a joint account, the statements were issued several years after the couple married and, furthermore, reflect no account activity over a ten-month period of time. There is also no evidence that both individuals had access to, and used, this account. The director therefore determined properly that the petitioner had failed to establish that she married F-J- in good faith.

On appeal, the petitioner explains why she did not label the photographs, why there was no activity on the couple's joint bank account, and why she filed her 2006 income tax return separately from F-J-'s. Although her explanations are reasonable, the documentary evidence the petitioner submitted below still does not establish that she married F-J- in good faith. As the petitioner still fails to describe the couple's courtship, wedding ceremony, and shared residence and experiences in probative detail, her statement submitted on appeal does not establish that she married F-J- in good faith.

Nor does the letter from [REDACTED] submitted on appeal establish that the petitioner married F-J- in good faith. Although [REDACTED] claims to have known the petitioner and F-J- as a married couple and lists several social events at which he allegedly saw them together, he does not describe any of those events in probative detail and his description of the couple's interactions was similarly lacking in probative detail.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married F-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that F-J- subjected her to battery or extreme cruelty during their marriage or that she married him in good faith. Although the record establishes that the petitioner is ineligible for the benefit sought, the matter must nonetheless be remanded on technical grounds for issuance of a NOID in accordance with 8 C.F.R. § 204.2(c)(3)(ii) as in effect on the date this petition was filed. Upon affording the petitioner the opportunity to respond to the NOID, the director shall issue a new decision based on the relevant evidence as it relates to the regulatory requirements for eligibility. On remand, the director need only address the matters before the AAO on appeal.

As always, 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).

ORDER: The director's May 4, 2011 decision is withdrawn. The petition is remanded to the director for issuance of a NOID and eventual entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.