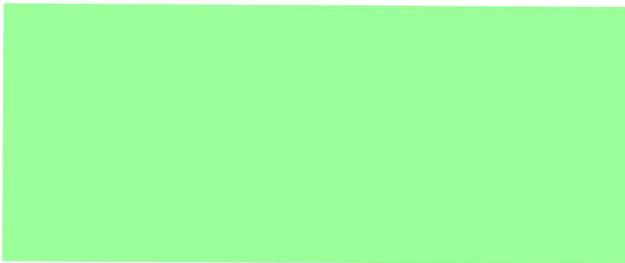




U.S. Citizenship
and Immigration
Services

(b)(6)

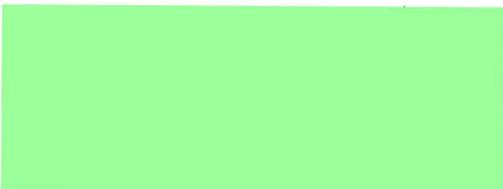


Date: **FEB 14 2013** Office: VERMONT SERVICE CENTER File

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:



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 its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a 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 motion 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 any motion to 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

(b)(6)

DISCUSSION: The Service Center Director (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 that he was legally free to marry his former spouse at the time of their wedding. The director further determined that the petitioner failed to establish that he entered into marriage with his former spouse in good faith, they resided together, and she subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits 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 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:

(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 file 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Nigeria, was admitted to the United States on November 19, 2005 as a B-2 visitor. He wed L-T-¹ a U.S. citizen, on November 9, 2006 in Pittsburgh, Pennsylvania. The petitioner filed the instant Form I-360 on July 29, 2008 based on his marriage to L-T-. The Form I-360 petition was approved on February 16, 2010. The petitioner's marriage to L-T- terminated in a divorce on January 26, 2011.

On May 3, 2010, the petitioner appeared at the Pittsburgh Field Office in connection with the adjustment of status application he filed based upon the approved Form I-360.² Subsequent to that interview, questions arose regarding the petitioner's ability to have legally entered into marriage with L-T-. Specifically, the field office director discovered that in April 2003, the petitioner had filed two applications for nonimmigrant visas at the U.S. Consulate in Lagos, Nigeria. The visa applications, dated April 12, 2003 and April 30, 2003, respectively list the petitioner as being married to two different individuals, [REDACTED] and [REDACTED]. The director noted that neither of these marriages is listed on the petitioner's Form I-360 and there is no indication that the marriages were terminated prior to the petitioner's marriage to L-T-. The director determined that because the record lacked evidence of the legal termination of the petitioner's prior marriages, the petitioner had failed to demonstrate that he was legally free to marry L-T-.

¹ Name withheld to protect individual's identity.

² See Form I-485, Application to Adjust Status, [REDACTED] filed July 29, 2008 and denied July 25, 2012.

The director issued a Notice of Intent to Revoke (NOIR) on September 24, 2010, and requested that the petitioner provide evidence of the legal termination of his marriages to [REDACTED] and [REDACTED]. The director noted that if it was the petitioner's position that he was not married to either of these individuals, he must submit evidence to explain the reason they were named on his visa applications. The director further requested that the petitioner submit additional evidence of his good-faith entry into marriage with his former wife, L-T-, joint residence with his former wife, and his former wife's battery or extreme cruelty. The petitioner, through counsel, submitted a timely response, and claimed that he was never married to either [REDACTED] or [REDACTED]. The petitioner further stated that he had already established his good-faith marriage, joint residence, and the requisite battery or extreme cruelty. The director found the petitioner's response to be insufficient, and he revoked approval of the petition on January 3, 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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's determinations and the appeal will be dismissed for the following reasons.

Qualifying Relationship

In his October 26, 2010 affidavit in response to the NOIR, the petitioner stated that his only marriage was to L-T- and he has never been married to either [REDACTED] or [REDACTED]. He noted that [REDACTED] is his biological sister and he does not know [REDACTED] although the record indicates that this is his sister's maiden name. The petitioner provided letters from his brother, Father [REDACTED] sister, [REDACTED] and brother-in-law, [REDACTED] who state that the petitioner is not married to [REDACTED]. The petitioner submitted copies of an affidavit from his father attesting to his sister's birth, his sister's marriage certificate and marriage registration certificate, and a photograph of his sister and her husband on their wedding day.

The petitioner also submitted two letters from [REDACTED] a notary public in Nigeria. The letters, dated October 20, 2010, state that there is no record of the petitioner's marriage in Nigeria to either [REDACTED] or [REDACTED]. These letters are of minimal probative value as they are not from an official source nor do they establish [REDACTED] authority to make such a declaration. Moreover, the names cited in the letters, [REDACTED] and [REDACTED] are not the same individuals who are the subjects of the NOIR, [REDACTED] and [REDACTED].

On appeal, counsel asserts that the nonimmigrant visa applications have not been properly authenticated and the information and writing on the applications, including the signatures, are not from the petitioner. A review of the record shows that even if the applications were completed by another individual, the petitioner was aware of the content of the nonimmigrant visa applications because he signed the applications. The signatures on the nonimmigrant visa applications are identical to the petitioner's signatures on his Form I-360 petition and Form I-485 adjustment application. In addition, the petitioner's photograph is attached to each of the nonimmigrant visa applications. These two identifiers establish that the nonimmigrant visa applications are, in fact, from the petitioner. An alien who has

applied for an immigration benefit is responsible for any application and the documentation submitted to support that application.

On appeal, counsel further asserts that even if the nonimmigrant visa applications were completed by the petitioner, the revocation is not proper because the director has cited no legal authority to establish that the misrepresentation on a nonimmigrant visa application can be the basis of a revocation of an approved visa petition. A visa petition can be revoked under section 205 of the Act for good and sufficient cause. Although the petitioner has established with probative evidence that [REDACTED] is his biological sister and they were never married, he has not provided sufficient evidence to establish that he was never married to [REDACTED]. The record of the petitioner's nonimmigrant visa application in which he stated that he was married to [REDACTED] provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to provide sufficient evidence that he was legally free to marry L-T- at the time of their wedding. Consequently, the petitioner has not established that he had a qualifying relationship with L-T- and that he was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(I)(aa)(AA) and (cc) of the Act.

Battery or Extreme Cruelty

The director correctly reviewed the evidence of abuse and determined that the record does not show that L-T- subjected the petitioner to battery or extreme cruelty. The petitioner in his initial undated statement briefly recounted that L-T- physically abused him and threatened him. The petitioner's testimony fails to describe in probative detail the alleged incidents of abuse.

The director properly reviewed and assessed the deficiencies of the petitioner's supporting evidence. In a letter dated January 18, 2008, the petitioner's brother, [REDACTED] listed incidents of abuse that he stated were provided to him by the petitioner. [REDACTED] does not discuss any specific incident of battery or extreme cruelty that he witnessed in probative detail, or provide any substantive description of his contemporaneous observations of the effects of any abuse on the petitioner.

The petitioner submitted a criminal docket, which reflects that L-T- was convicted of simple assault over five years prior to her marriage to the petitioner. The director correctly noted that L-T-'s criminal records do not reveal any acts of abuse perpetrated upon the petitioner. The petitioner has not explained the circumstances of L-T-'s conviction and how it is related to his claim of marital abuse.

The petitioner submitted his dental records, which reflect that on July 13, 2007, he sought dental treatment for a toothache and had it extracted. Although the petitioner indicated in his personal statement that he had his tooth extracted after being hit in the jaw by L-T-, he does not offer any probative details of this alleged incident. The petitioner's one-sentence statement describing the incident fails to provide a probative, credible and detailed description of the alleged abuse. The dental records also do not state that the petitioner suffered an injury to his jaw.

The petitioner also provided copies of audio tapes, which counsel asserts have been authenticated by the petitioner as recordings of L-T- verbally abusing him. The petitioner, however, does not discuss the content of these recordings in any of his statements and he has failed to describe with credible, probative and detailed testimony the alleged verbal and physical abuse. The petitioner's brother, [REDACTED] also does not discuss any specific incident of battery or extreme cruelty that he has knowledge of in probative detail. Accordingly, the petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to demonstrate that he entered into his marriage in good faith. In the petitioner's statement dated April 17, 2008, he recalled that a friend introduced him to L-T- when he was at a park. He stated that L-T- started visiting him and they "became really intimate." The petitioner recounted that L-T- cared for him when he was in an automobile accident and his apartment burned in a fire. The petitioner reiterated these statements in a second letter dated April 21, 2008. The petitioner did not describe his wedding ceremony, joint residence with his former spouse or any of their shared experiences.

The director properly assessed the statements from the petitioner's friends, [REDACTED] and [REDACTED] briefly stated that he knows of the petitioner's marriage to L-T-, but provided no other information establishing his personal knowledge of the relationship. [REDACTED] stated that the petitioner had come to his store with his stepdaughters and he had seen the petitioner with L-T- at his store on one occasion. Although [REDACTED] attested to seeing the petitioner with L-T- on a single occasion, he did not describe this visit to his store in detail or otherwise provide detailed information establishing his personal knowledge of the relationship.

On appeal, counsel asserts that USCIS approved the Form I-130 filed by L-T- on the petitioner's behalf. Counsel contends that "the approval of the I-130 provides a very strong indication that the relationship was bona fide." The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). In this case, the petitioner provided only a cursory description of his marriage and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof.

On appeal, counsel asserts that the petitioner submitted evidence to show that L-T- is receiving spousal support from him. The record contains a court order issued during the petitioner and L-T-'s divorce proceedings, which mandates the petitioner's payment of spousal support. However, counsel has not stated how this order reflects the petitioner's good-faith intent in entering the marriage. A full review of the relevant evidence fails to reveal any error in the director's determination. The petitioner submitted a Christmas card addressed to him and L-T- one month after their marriage. He issued a statement in which he briefly recalled how he met L-T-, but he did not describe their wedding ceremony, joint

residence or any of their other shared experiences. The statements from the petitioner's friends also do not discuss in probative detail their observations of the petitioner's interactions with or feelings for L-T- during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director also correctly determined that that the record fails to demonstrate that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from December 2006 until August 2007 at an apartment in Pittsburgh, Pennsylvania. The Christmas card sent to the petitioner and L-T- reflects that it was mailed to this address. However, the petitioner has provided no other documentary evidence of shared residence with L-T-.

In his October 26, 2010 affidavit submitted in response to the NOIR, the petitioner stated that he could not be added to the lease for L-T-'s apartment because she resided in Section Eight housing. Although the petitioner has explained the reason he could not be added to the lease, he does not specify in his statements the dates of his residence with L-T- and he does not describe their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends and brother also do not describe any visit to the petitioner's residence with L-T-. Accordingly, the record does not establish that the petitioner resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he had a qualifying relationship with L-T- and was eligible for immediate relative classification based on such a relationship. He has also failed to establish that he entered into marriage with L-T- in good faith, they resided together, and she subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner is 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 his 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.