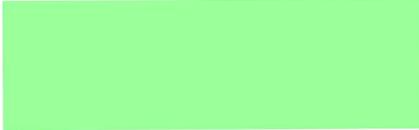


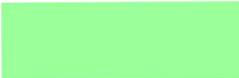


U.S. Citizenship
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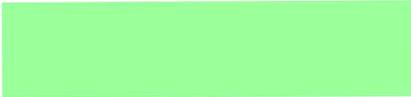
Date: **MAR 09 2013**

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

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her former husband in good faith, they resided together, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a statement and additional evidence.

Relevant 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, 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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 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 or the self-petitioner’s child 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:

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.

(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 December 22, 2007, as a nonimmigrant visitor. The petitioner married [REDACTED] a U.S. citizen, on November 15, 2007 in New York, New York.¹ Their marriage was dissolved in a divorce on November 8, 2010. The petitioner filed an initial Form I-360 on September 15, 2009, which was approved in September 2010. The approval of the petition was revoked on notice on May 23, 2012. The petitioner filed the instant Form I-360 on December 11, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. 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 grounds for denial and the appeal will be dismissed for the following reasons.

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 affidavit, dated December 4, 2010, the petitioner stated that she met her former husband at a barbeque. She recounted that they visited sites in New York City and kept in touch when she returned to Nigeria. The petitioner stated that when she returned to the United States a year later, they fell in love and got married on November 15, 2007. The petitioner recalled that her former husband was a chef and he had a catering business. The petitioner did not further describe their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner initially submitted a photograph of herself with her former husband and letters from her sister, [REDACTED] and her mother, [REDACTED] who reside in Nigeria, and her cousin, [REDACTED] and her friend, [REDACTED] who reside in New York. These individuals briefly discussed the petitioner's marriage, but provided no probative information regarding the petitioner's good faith in entering the relationship.

¹ Name withheld to protect the individual's identity.

In response to the RFE, the petitioner submitted letters from [REDACTED] and Pastor [REDACTED] stated that he has visited the petitioner and [REDACTED] - at their apartment on several occasions, but he failed to discuss any visit or social occasion in probative detail. His affidavit speaks predominately of the alleged abuse. Pastor [REDACTED] discussed the couple's membership at her church, but offered no probative details to establish her personal knowledge of the petitioner's good-faith entry into the marriage.

Ms. [REDACTED] stated that she was the petitioner and [REDACTED] landlord from 2007 until 2009 at an apartment in the Bronx, New York. Although Ms. [REDACTED] provided detailed information on her knowledge of the petitioner's marriage to [REDACTED], her testimony is undermined by derogatory evidence in the record, which was the basis of the revocation of the approval of the petitioner's prior Form I-360. The petitioner was given notice of this derogatory information in the notice of intent to revoke (NOIR) the approval of her prior Form I-360 petition and in the denial notice for the instant Form I-360 petition. The record reflects that on February 7, 2011, officers from U.S. Citizenship and Immigration Services (USCIS) visited Ms. [REDACTED] signed a sworn statement in the presence of the USCIS officers in which she declared that she was the owner of the aforementioned apartment, but [REDACTED] had never resided at her property.

In response to the RFE, the petitioner also submitted: additional photographs of herself, her two children from a prior relationship and the petitioner; the life insurance policies for her and [REDACTED]; jointly filed tax returns for 2007 and 2008; joint bank account statements; joint cable and telephone bills; and greeting cards addressed to the petitioner and [REDACTED]. However, the probative value of these documents is undermined by additional derogatory evidence in the record, of which the petitioner was made aware in both the NOIR on her prior Form I-360 and the denial notice on her current Form I-360. The petitioner indicated on the Form I-360 that she resided with [REDACTED] - from 2007 until May 2009. She submitted copies of rent receipts and a lease for the apartment. However, on February 7, 2011, USCIS officers visited another apartment shown in public records as [REDACTED] residence since August 2001. The officers spoke with [REDACTED] sister and a family friend who stated that [REDACTED] - had been residing at the apartment for the previous three years, but was currently homeless and addicted to drugs and alcohol. The officers noted that [REDACTED] sister and friend did not seem to know about [REDACTED] s marriage and purported catering business.

The NOIR and denial notice also informed the petitioner that on February 8, 2011, USCIS officers visited [REDACTED] at his place of employment. Mr. [REDACTED] had previously completed a Form I-864, Affidavit of Support, on behalf of the petitioner and her two children. Mr. [REDACTED] stated that he has never met [REDACTED] when he was shown a photograph of him. He further stated that he knows that [REDACTED] is not related to the petitioner's family and is not the stepfather of the petitioner's children. Mr. [REDACTED] indicated that he knows the petitioner's children's biological father. He signed a sworn statement in the presence of USCIS officers in which he declared that he has never met or known [REDACTED] and he withdrew the Form I-864 he completed on behalf of the petitioner. On appeal, counsel asserts that [REDACTED] met [REDACTED] on one occasion at a party before issuing a Form I-864 on behalf of the petitioner. Counsel contends that Mr. [REDACTED] only issued the sworn statement because he was threatened that he would lose his employment. Counsel, however, has not submitted an affidavit from Mr. [REDACTED] or any other evidence to support his assertion.

On appeal, counsel resubmits a joint telephone bill. Counsel also submits a Certificate of Group Health Plan Coverage and explanations of medical benefits, which reflect that [REDACTED] was a dependent on the petitioner's health insurance. However, the Certificate of Group Health Plan Coverage shows that [REDACTED] was added as a beneficiary on April 11, 2010, almost one year after his separation from the petitioner. The explanations of medical benefits were similarly issued for medical service in August 2010, over one year after the petitioner's separation from [REDACTED]. Counsel also submits statements from [REDACTED] and [REDACTED] with attached photographs, which he asserts demonstrate that [REDACTED] the petitioner's former landlord, personally knows [REDACTED]. In their statements, Mr. [REDACTED] and Mr. [REDACTED] stated that the attached photographs depict Ms. [REDACTED] and her children with [REDACTED]. Mr. [REDACTED] also briefly stated that he attended the petitioner's wedding and visited the couple at their residence. However, he provided no probative details of the wedding ceremony or his visits to their residence. Even if the photographs demonstrate that Ms. [REDACTED] knows [REDACTED], the petitioner still has not established her good faith entry into the marriage. In her affidavit, the petitioner fails to describe their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends or family members discusses in probative detail their observations of the petitioner's interactions with or feelings for her former husband during their courtship or marriage. 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 director also correctly determined that the record fails to demonstrate that the petitioner resided with her former husband. On the Form I-360, the petitioner stated that she lived with [REDACTED] from 2007 until May 2009 at the apartment in the Bronx, New York. Although the petitioner submitted copies of rent receipts and a lease for the apartment signed by the purported landlord, [REDACTED] derogatory information in the file undermines the credibility of this evidence. As discussed, on February 7, 2011, USCIS officers visited Ms. [REDACTED] and she signed a sworn statement that she was the owner of the apartment, but [REDACTED] had never resided at her property.

The petitioner also submitted photocopies of mail envelopes, life insurance policies, jointly filed tax returns, joint bank account statements, joint cable and joint phone bills addressed to her and [REDACTED] at the Bronx apartment she listed on her Form I-360. However, in her affidavit, the petitioner does not describe their home or shared residential routines in any detail. The petitioner's friends and family members also do not describe any visit to the couple's residence in probative detail. The submitted photographs are not identified as having been taken at any specific residence that the petitioner shared 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

The petitioner has also failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage. In her affidavit, the petitioner stated that [REDACTED] was controlling, called her derogatory names, hit her, demanded money from her, and threatened her with violence and

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deportation. The petitioner's statements, however, fail to provide probative details on the alleged abuse.

The petitioner's cousin, [REDACTED], stated that [REDACTED] - abandoned the petitioner, called the petitioner names and demanded money from the petitioner. Ms. [REDACTED] further stated that she witnessed physical abuse in the marriage. However, she failed to discuss any specific incident of battery or extreme cruelty that she witnessed in probative detail, or provide any substantive description of her contemporaneous observations of the effects of any abuse on the petitioner.

The petitioner's friend, [REDACTED], stated that [REDACTED] - threw eggs at the petitioner, had his "drinking buddies" call the petitioner names, and he brought home another women while the petitioner was at work. The petitioner, however, did not mention these specific incidents in her affidavit. Similarly, the petitioner's friend, [REDACTED], discussed an incident of physical abuse that he states occurred in August 2008, which is not mentioned in the petitioner's statement. The petitioner's purported landlord, [REDACTED], also discussed numerous incidents of alleged abuse that were not mentioned in the petitioner's self-statement, including bringing other women to the couple's apartment, threatening the petitioner's children with deportation, stealing items from their apartment, threating violence against the petitioner's children, and throwing eggs at the petitioner. The credibility of Ms. [REDACTED]'s statement is further undermined by her sworn statement in which she declared that she is the owner of the aforementioned apartment, but [REDACTED] has never resided at her property.

In response to the RFE, the petitioner submitted a letter from [REDACTED] a counselor with [REDACTED] a copy of a meal ticket for the [REDACTED], and a copy of an Ex Parte Temporary Order of Protection. Ms. [REDACTED] stated that the petitioner suffered emotional, verbal and physical abuse during her marriage to J [REDACTED]. However, her letter speaks only in general terms and does not describe any specific incidents of abuse. The Family Offense Petition the petitioner filed against [REDACTED] for her temporary restraining order also only briefly discusses the alleged abuse and fails to provide any additional probative details. The petitioner has not indicated whether she was granted a final protection order.

In response to the RFE, the petitioner also submitted psychological assessments of herself and her teenage son and daughter from [REDACTED], Ph.D. Dr. [REDACTED] diagnosed the petitioner with adjustment disorder with depressed mood and diagnosed the petitioner's children with adjustment disorder with anxiety. She reported that during the assessment, the petitioner stated that [REDACTED] would drink, call her names, threaten deportation, break items in their home, disappear from their home and he became possessive. She reported that the petitioner's daughter stated that [REDACTED] threw items in the house, called the petitioner names and threaten to have them deported. She also reported that the petitioner's son stated during his assessment that [REDACTED] - threw items in their home, threatened violence against the petitioner and demanded money from the petitioner. Dr. [REDACTED] noted, however, that the petitioner's children were in boarding school during the petitioner's marriage to [REDACTED].

On appeal, counsel asserts that the evidence submitted reflects that Ms. Olatunji knew the petitioner and [REDACTED]. However, the conflicting testimony of Ms. [REDACTED] undermines the overall credibility of her statements. The petitioner has failed to provide a consistent, credible and detailed account of the

alleged abuse she suffered during her marriage to [REDACTED]. Her friends discuss incidents that she does not mention in her self-affidavit. The letter from Ms. [REDACTED] speaks only in general terms and the petitioner's request for a temporary restraining order contains only a short summary of the alleged abuse. Although the psychological assessments discuss the alleged abuse in additional detail, the evaluations alone do not overcome the conflicting testimony in the record regarding the petitioner's shared residence with [REDACTED], which is where the petitioner claims she was subjected to abuse. Accordingly, the petitioner has not established that her former husband subjected her or either of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the decision of the director, as the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.²

Conclusion

On appeal, the petitioner has failed to establish that she entered into marriage with her former husband in good faith, they resided together, and he subjected her to battery or extreme cruelty during their marriage. Beyond the decision of the director, the petitioner has also failed to demonstrate that she had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based upon that relationship. 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.

² A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).