



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 05 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director) revoked the immigrant visa petition. 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 United States citizen.

The director revoked the petition on the basis of her determination that the petitioner did not establish that she entered into the marriage with her spouse in good faith. On appeal, the petitioner submits a statement and additional evidence.

*Relevant Law and Regulations*

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

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him 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)(I) 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 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 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)(1), which states, in pertinent part:

(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.

\* \* \*

(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, a citizen of Nigeria, entered the United States on [REDACTED] as the K-1 nonimmigrant fiancée of I-E-<sup>1</sup>, a U.S. citizen. The petitioner married I-E- on [REDACTED] in [REDACTED], Ohio. On [REDACTED], the petitioner gave birth to her first child, whose father is I-E-'s cousin, C-N-<sup>2</sup>. I-E- filed an immigrant visa petition on behalf of the petitioner, which was later denied following a site visit to the petitioner's home and an interview with the petitioner. I-E- was not present during either the site visit or the second interview. On May 8, 2011, the petitioner filed the instant Form I-360 petition, which was approved on August 1, 2011. The director subsequently issued a Notice of Intent to Revoke (NOIR), notifying the petitioner that the evidence did not establish that she married I-E- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director revoked the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's ground for revocation. The appeal will be dismissed and approval of the petition will remain revoked for the following reasons.

<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> Name withheld to protect the individual's identity.

*Good-Faith Entry into the Marriage*

After a thorough review of the relevant evidence of record, including an audio recording of the petitioner's November 23, 2010 interview which we reviewed at the petitioner's request, the preponderance of the relevant evidence fails to demonstrate that the petitioner entered into her marriage with I-E- in good faith. In her initial affidavit provided with her Form I-360 submission, the petitioner stated that I-E-'s sister introduced them in early 2003 and they corresponded via telephone and electronic mail until meeting in person in May 2003, when I-E- visited the petitioner in Nigeria. The record reflects that I-E- was still married to his first wife in Texas at the time of his May 2003 visit to Nigeria. The petitioner recalled that I-E- spent four weeks in Nigeria, but did not describe any activities they shared. The petitioner briefly noted that I-E- proposed marriage and she accepted. The petitioner indicated that when I-E- returned to Nigeria in December 2003, he took her to meet his family, but did not further describe their time together. The petitioner recounted that she came to the United States in [REDACTED] and arrived to a home on [REDACTED] in [REDACTED], Ohio. On appeal, the petitioner submits a 2005 lease for this residence indicating that the home was owned by C-N-, I-E-'s cousin. The petitioner indicated that from the moment of her arrival in the United States, I-E- treated her poorly, criticizing her weight and refusing to engage in intimate relations. The petitioner asserted in a June 15, 2011 affidavit, submitted on appeal from the denial of her adjustment of status application, that she was in a quandary because she knew that if she did not marry I-E- she would be unable to later adjust her status in the United States and she was also ashamed to go home.

The petitioner stated that she married I-E- on [REDACTED], and on their wedding night discovered that he suffered from erectile dysfunction. However, in a subsequent affidavit, dated March 19, 2013, submitted in response to the NOIR, the petitioner indicated that she learned that I-E- was unable to have children *before* their wedding. The petitioner has claimed that this issue, and I-E-'s mistreatment, caused her to turn to C-N- for support and she became pregnant with her and C-N-'s first child. On appeal, the petitioner submits her first son's birth certificate, and confirms that she became pregnant prior to her wedding to I-E-. She further states that she was unaware that she was pregnant until after the wedding. In her statement in response to the NOIR, the petitioner indicated that she informed I-E- of her pregnancy, and he agreed "to do what was right for [the] child." The petitioner did not state specifically what was agreed; however, during her November 2010 interview with USCIS, she stated that I-E- felt responsible for her and agreed to continue to support her.

In November 2010, a USCIS officer visited the petitioner at her home in [REDACTED] after which the petitioner attended an interview at the [REDACTED] Field Office. During the interview, the petitioner stated that I-E- was, at that time, living in Texas with his first wife, and that the longest consecutive period he had spent in Ohio over the past year was approximately one month. In her affidavits, the petitioner represented that I-E- initially lived with her, but took frequent trips to visit his children in Texas. The petitioner has not explained when I-E- ceased to reside in Ohio.

During the November 2010 interview, the petitioner stated that she and C-N- have a second child together, born in 2008. She also stated that C-N-'s cousin, E-N-<sup>3</sup>, lived at the home with her and her two children, and that C-N- visited frequently. However, USCIS records indicate that C-N- continued to reside, as of 2012, at the [REDACTED] address.

On appeal, the petitioner asserts that she has not had a long-term relationship with C-N- as the director assumed. However, the evidence of record indicates that the petitioner engaged in intimate relations with C-N- prior to her marriage to I-E-, conceived two children with C-N-, and resided in his home. Although the petitioner states on appeal that she did not have a long-term relationship with C-N-, she has never in these proceedings provided a substantive account of her relationship with C-N- to the contrary. When viewed in its totality, the preponderance of the relevant evidence indicates that it is more likely than not that the petitioner had a long-term relationship with C-N-, which began prior to her marriage. The evidence of a long-term relationship with an individual other than the petitioner's spouse, which began prior to the petitioner's marriage, weighs heavily against a finding that the petitioner married her spouse in good faith.

The record contains other relevant evidence of diminished probative value. In response to the NOIR, the petitioner submitted what she claimed are rent receipts from 2005 for the residence on [REDACTED]. The receipts are not chronologically ordered, and appear to have been prepared on the same date. For example, receipt number [REDACTED] is for April 2006 and the receipt for May 2006 is number [REDACTED]. The petitioner also submitted a deed for the [REDACTED] property, indicating that in May 2011 she owned the property, and transferred ownership to herself and I-E-. The petitioner has not explained how she became the owner of the property, which she represented previously belonged to C-N-, or why she transferred ownership in 2011.

The petitioner submitted an affidavit from friend [REDACTED] who briefly stated that the petitioner told her that she loved her husband and wanted to spend the rest of her life with him. However, Ms. [REDACTED] did not attest to any personal knowledge of the petitioner's relationship with I-E-. On appeal, the petitioner submits an affidavit from I-E-'s first wife, stating that the petitioner and I-E- resided as husband and wife in [REDACTED] Ohio. However, this statement contradicts the petitioner's admission during her November 2010 interview that I-E- resided in Texas with his former wife. The petitioner also submits an affidavit from friend [REDACTED] who briefly states that she met the petitioner in 2005 at a hair salon and that the petitioner and I-E- resided together as husband and wife. Ms. Frazer does not indicate that she has personal knowledge of the petitioner's relationship with I-E-, and does not attest to having met I-E- at any time.

When viewed in its totality, the preponderance of the relevant evidence does not demonstrate that the petitioner married I-E- in good faith. To establish good-faith entry into marriage, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . and affidavits of persons with personal knowledge of the relationship. All

<sup>3</sup>Name withheld to protect the individual's identity.

credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). Although the petitioner submitted documentation of her courtship with I-E- prior to entering the United States on a fiancée visa, the record shows that after her arrival, she commenced a relationship with I-E-’s cousin, with whom she apparently resided and demonstratively conceived a child prior to her wedding to I-E-. The petitioner has not adequately explained her relationship with C-N-, with whom she has two children. Further, the petitioner has not substantively described her decision to marry the petitioner, their wedding ceremony, or other shared experiences beyond the abuse. The petitioner has submitted bills and insurance documentation indicating that she and I-E- had joint utility accounts. However, when considered in the aggregate with the other evidence described above, the preponderance of the relevant evidence does not establish that the petitioner entered into the marriage with I-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

On appeal, the petitioner has not overcome the director’s ground for revocation of her self-petition. The petitioner has not demonstrated that she married I-E- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to 204(a)(1)(A)(iii) of the Act, and the director’s decision revoking the petition will not be disturbed.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the director had good and sufficient cause to revoke approval of the petition. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above.

**ORDER:** The appeal is dismissed