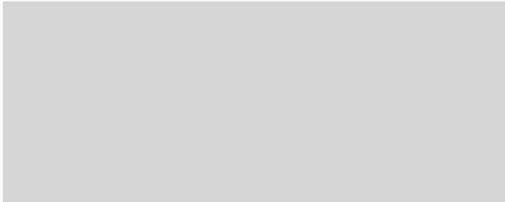




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 16 2015**

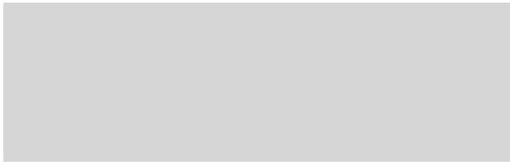
FILE #: [REDACTED]

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:



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) 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 approval of the petition after properly notifying the petitioner. 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 his United States citizen spouse.

The director revoked approval of the petition after determining that the petitioner did not demonstrate a qualifying spousal relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification on the basis of such a relationship. On appeal, the petitioner submits a brief and an updated personal statement.

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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which

states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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 both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petitioner should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who last entered the United States on November 30, 2002, as a nonimmigrant visitor. The record indicates that he was previously married to F-O-¹ in Nigeria. In a separate proceeding, the petitioner submitted a divorce decree indicating that he and F-O- were divorced in Nigeria on [REDACTED], 2003 when the petitioner was in the United States. The petitioner subsequently married his current wife, N-O-², a U.S. citizen, on [REDACTED], 2004 in [REDACTED] Texas. The petitioner filed the instant Form I-360 self-petition on April 30, 2007, and it was initially approved on July 10, 2008. The director issued a Notice of Intent to Revoke (NOIR) approval of the petition on March 7, 2013, notifying the petitioner that his petition was granted in error, as a full review of the administrative record demonstrated that he had not established the requisite qualifying relationship to a U.S. citizen spouse and corresponding eligibility for immediate relative classification. Specifically, the NOIR advised the petitioner that a Report of Investigation (ROI) revealed that the claimed Nigerian divorce decree for his first marriage to F-O- is not authentic. The petitioner timely

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

responded to the NOIR. However, the director found the response insufficient to overcome the proposed ground for revocation, and thus, revoked approval of the petition on October 20, 2014. The petitioner timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for revocation. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

We find no error in the director's determination that the petitioner did not establish a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. The petitioner submitted a claimed Nigerian divorce decree purporting to have been issued by the Honorable Justice [REDACTED] in the High Court of [REDACTED] on January 13, 2003, [REDACTED]. The administrative record contains an ROI for an overseas investigation of the decree conducted by the U.S. Embassy in [REDACTED] Nigeria, which found the document to be fraudulent. According to the ROI, the personal assistant to the High Court Judge of [REDACTED] reviewed the claimed divorce decree and stated that the suit number and the judge listed on the document were incorrect. Specifically, the ROI indicates that all suit numbers in [REDACTED] High Court begin with [REDACTED], rather than HK, and that there has never been a high court judge at the court by the name of Bala Usman. In response to the director's NOIR, the petitioner submitted a Decree *Nisi* of Dissolution of Marriage, a Memorandum of Decree *Nisi* Having Become Absolute, and a Certificate of Decree *Nisi* Having Become Absolute, along with a supplemental personal declaration and the cover letter of the petitioner's new counsel in Nigeria who obtained the documents. The claimed divorce documents bear an issue date of March 19, 2012 and the letter from the petitioner's counsel in Nigeria is dated March 21, 2012, nearly a year before the issuance of the director's NOIR. The three claimed divorce documents all bear the same suit number, HK/40/2002, as set forth in the previously submitted decree, and the Decree *Nisi* of Dissolution of Marriage names [REDACTED] as the Honorable Justice presiding over the case. The petitioner, in response to the NOIR, denied any wrongdoing and explained how he obtained the original and more recent divorce records through the assistance of counsel in Nigeria, but his statement did not otherwise resolve the deficiencies identified in the ROI. Consequently, the director correctly concluded that the petitioner had not established a qualifying spousal relationship with a U.S. citizen, as he had not demonstrated that his prior marriage in Nigeria had been lawfully terminated.

On appeal, the petitioner asserts that he obtained the new divorce documents from the [REDACTED] High Court through newly retained counsel in Nigeria after receiving the NOIR, and thereafter, he submitted them, along with the receipt for the records, to United States Citizenship and Immigration Services (USCIS). See Counsel's Letter, dated October 31, 2014. However, the record shows that the supplemental divorce documents, the receipt, and the cover letter of the petitioner's counsel in Nigeria all bear March 2012 dates, and counsel in Nigeria's letter in particular demonstrates that the documents were obtained prior to the issuance of the director's NOIR. The petitioner further contends that the error in the divorce decree's suit number may be a clerical error on the part of the court and that the revocation is improper because the ROI did not conclusively establish that the petitioner's divorce did not take place. However, it is the petitioner alone who bears the burden in these proceedings to

demonstrate his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this evidentiary standard, we are not required to find the questionable divorce records submitted by the petitioner sufficient to demonstrate that his first marriage was lawfully terminated, where we have noted deficiencies in the documents that the petitioner has not overcome on appeal.³ The petitioner's assertion does not address the ROI finding that the judge named in the divorce records never presided in the [REDACTED] High Court. On appeal, the petitioner reasserts the role he played in obtaining the divorce records overseas, but he still does not address the deficiencies of the documents as identified in the ROI. The petitioner also indicates that his counsel has attempted to contact the [REDACTED] High Court directly without success and that he has had insufficient time to complete his investigation. The record does not contain any updated information regarding the results of the petitioner's investigation since filing the instant appeal, and there is no evidence that the petitioner has attempted to authenticate the divorce records already in the record to overcome the noted deficiencies therein. While we recognize the petitioner's difficulties in obtaining evidence and conducting an investigation abroad, we lack the authority to disregard the statutory requirements for eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the totality of the relevant, credible evidence does not establish that the petitioner has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's grounds for revocation. The petitioner has not established a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

In these proceedings, the petitioner bears the burden of proof to establish 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.

³ In addition, the administrative record contains two biographic forms G-325A, that the petitioner submitted in connection with immigrant visa petitions filed on his behalf, based on his second marriage to K-S- (name withheld to protect the individual's identity), a U.S. citizen, and on his current marriage to N-O-. The petitioner did not disclose his prior marriage to and divorce from F-O- in Nigeria on either of the two biographic forms as required.