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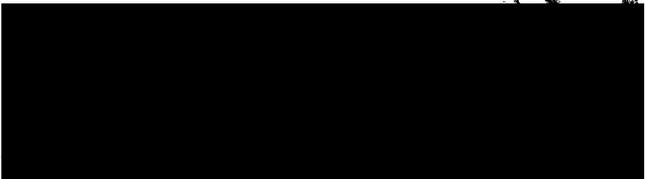
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U.S. Citizenship
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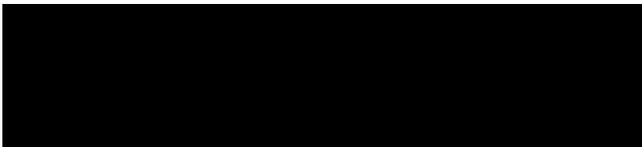
Office: VERMONT SERVICE CENTER

Date: SEP 08 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center Director in a decision dated December 17, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of Ethiopia and citizen of Britain who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB) states in pertinent part:

(II) For purposes of subclause (I), an alien described in this subclause is an alien –

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(ccc) who 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant 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) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, because according to the evidence on the record, the petitioner and her citizen spouse had terminated their marriage more than two years prior to the filing of the petition. The director determined and the AAO concurs that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing a Form I-360 petition.

According to the evidence on the record, the petitioner married her United States citizen spouse on February 22, 1996 and divorced on June 25, 1998. The petitioner filed the Form I-360 self-petition on September 25, 2002, more than four years after the marriage was terminated.

The petitioner failed to establish that she was the spouse of a citizen either at the time of or within two years prior to the filing of the petition.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that she is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. The petitioner does not fall within one of the statutory exceptions to this requirement. She was divorced from her abusive spouse for more than two years prior to the filing of the instant petition.

The petitioner is ineligible for the bigamy exception.

On appeal, counsel for the petitioner argues that the petitioner is still eligible for the battered spouse visa even though she was not married either at the time or within two years of the filing of the petition because her husband had engaged in bigamy. Counsel further argues that the petitioner was unaware of their divorce and

continued living with the abusive spouse after the divorce. Counsel's assertion is not persuasive. The petition was not denied on the grounds that the petitioner's marriage to her citizen spouse was invalid because her husband had engaged in bigamy. It was denied because the spousal relationship had terminated more than two years prior to the filing of the petition. Counsel suggests that if an alien unwittingly weds a spouse engaged in bigamy, the alien may obtain classification as a battered spouse indefinitely, regardless of the status of the marriage. Counsel's assertion lacks a statutory basis and therefore is insufficient to overcome the director's objection to approving the petition.

Beyond the decision of the director, the petitioner has not established that she is a person of good moral character,¹ married her citizen spouse in good faith or that she was battered by or the subject of extreme mental cruelty by her citizen spouse. For these additional reasons, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The record indicates that the petitioner has been charged with gaming violations on three occasions. The final dispositions of these charges are not in the record of proceeding.