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[Redacted]

FILE: [Redacted]
EAC 01 088 54259

Office: VERMONT SERVICE CENTER

Date: APR 26 2005

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:

[Redacted]

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.

Mari Johnson

& Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Ethiopia 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.

The director denied the petition, finding that the petitioner failed to establish that she had entered into the marriage to the citizen in good faith.

On appeal, the petitioner submits an additional statement.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended 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)(ix) states, in part:

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.

The record reflects that the petitioner entered the United States as a B-2 nonimmigrant visitor on August 19, 1988. The petitioner filed an affirmative application for asylum on July 17, 1989. The petitioner was placed in deportation proceedings on November 22, 2000. The petitioner renewed her asylum application before the immigration judge and requested withholding of deportation. On March 2, 1990, the immigration judge denied the petitioner's applications for political asylum and withholding of deportation. The petitioner appealed the decision to the Board of Immigration Appeals (BIA). The BIA dismissed her appeal on April 8, 1992. The petitioner appealed the BIA decision to the 9th Circuit Court. On February 4, 1994, the 9th Circuit Court remanded the case to the BIA. The BIA remanded to the immigration judge. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on September 2, 1994 in Seattle, Washington. On August 2, 1995, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The district director issued a notice of intent to deny the petition, finding no evidence that the marriage was bona fide. On November 24, 1995, the district director denied the Form I-130 petition and a concurrently filed Form I-485. On January 19, 2001, the petitioner filed a Form I-360 petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had resided with her spouse, that she had entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, the director asked her to submit additional evidence (RFE). The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, and that she married her spouse in good faith. The petitioner requested an additional 60 days in which to respond to the RFE. The director granted the petitioner's request for an extension in which to respond to the RFE.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner submits an additional statement.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good

faith. The petitioner provided Citizenship and Immigration Services (CIS) with her own statements and those of friends and relatives. Many of the statements were written on identical forms and fail to provide sufficient detail to establish the bona fides of the marriage. The petitioner failed to submit insurance policies where she or her spouse is named as the beneficiary. She failed to provide CIS with tax records and other financial documents that show they shared accounts. The petitioner did submit one letter from First Interstate Bank stating that the petitioner and her spouse have a joint account. The letter lacked an account number. It failed to indicate when the account was opened and whether there had been any activity on the account. On appeal, the petitioner stated that she was unable to obtain more information from the bank because it is now under different management. In the Form I-130 proceedings, the district director advised the petitioner and her spouse of the results of an investigation into the bona fides of their marriage. In his decision denying the Form I-130 petition, the district director indicated that "it appeared" that the petitioner and her spouse had entered into their marriage for the sole purpose of circumventing immigration laws. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

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.