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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 14 2006
EAC 01 013 51400

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

The petitioner is a native of Lebanon and a citizen of Canada 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 he entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence.

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.

According to the evidence on the record, the petitioner was previously married to [REDACTED]. On September 13, 1994, the petitioner was ordered excluded and deported. They petitioner divorced [REDACTED] in Lebanon on October 6, 1998, and wed [REDACTED] a U.S. citizen, on November 25, 1998 in Milton, Massachusetts. The petitioner's citizen spouse filed a Form I-130 petition on the petitioner's behalf on January 25, 1999. The petitioner filed a Form I-485 application to register permanent residence or adjust status concurrently with the Form I-130 petition. The petitioner and his citizen spouse were divorced on July 14, 2000.¹ The petitioner's wife withdrew the Form I-130 petition on September 29, 2000. On October 11, 2000, 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, his U.S. citizen spouse during their marriage. The record reflects that the petitioner was placed in removal proceedings on May 4, 2001 and was paroled into the United States on May 14, 2001. The petitioner's next hearing before an immigration judge is scheduled for July 13, 2005.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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 regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with his 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 he was married to a U.S. citizen, that both he and his wife had terminated all prior marriages, that he has resided with his spouse, is a person of good moral character, and that he entered into the marriage in good faith, the director asked him to submit additional evidence.

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. That discussion will not be repeated here.

On appeal, counsel for the petitioner submits additional evidence and asserts that a discrepancy noted by the director was the fault of the petitioner's previous attorney.

¹ The petitioner and his citizen wife received a judgment of divorce nisi on July 14, 2000. The judgment became final 90 days later.

In review, the evidence is insufficient to establish that the petitioner 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 his citizen spouse in good faith. The evidence provided by the petitioner in response consists of the following:

- The petitioner's affidavit dated April 12, 2001.
- Affidavits of [REDACTED] friends of the petitioner.
- Copy of a Capital One Visa credit card issued to the petitioner and his wife.
- A rental agreement in the petitioner's name alone.
- Partial copies of two joint bank statements. The first statement, dated February 14, 2000, had an ending balance of \$568.15. The second statement, dated March 16, 2000, had a negative balance of -\$21.98.
- An apartment lease in the names of the petitioner and his wife commencing March 1, 2000.
- A 1999 joint federal tax return dated April 6, 2000.
- A 1998 joint federal tax return.
- A letter dated June 29, 2004 from the Hamilton Company Management stating that the petitioner and his wife lived at [REDACTED] from February 28, 1998 to June 5, 2000.

While the petitioner submitted a copy of a credit card issued to him and his wife, he failed to submit proof that the petitioner and his wife used the account, and shared financial responsibilities. In her decision, the director noted that the petitioner had indicated on the Form I-360 that he and his wife separated in December 1999 and that the evidence he submitted relates to activity subsequent to the date of separation. On appeal, counsel for the petitioner asserts that the petitioner's former attorney made an error on the Form I-360 as to the date of separation. Counsel's assertion is not persuasive. The petitioner signed the Form I-360, affirming that the contents of the petition are "true and correct." The petitioner failed to submit insurance policies in which he or his wife was named as the beneficiary. He failed to submit evidence of his courtship and wedding ceremony. He provided no evidence of joint ownership of property. No children were born of the marriage. According to the evidence on the record, the district office exams unit referred the petitioner's I-130 and I-485 case to investigations as a possible fraudulent marriage. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

Beyond the director's decision, the petitioner failed to establish that he is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F). According to the evidence on the record, the petitioner was arrested and charged with alien smuggling on September 13, 1994. For this additional reason, the petition cannot 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.