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U.S. Citizenship
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Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 17 2005
EAC 03 206 53216

IN RE: Petitioner: [redacted]
Beneficiary [redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director of the Vermont Service Center denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a native and citizen of Bangladesh who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

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 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 had been divorced by her permanent resident spouse more than two years prior to the filing of the petition.

On appeal, the petitioner asserts that her husband's divorce was illegally and fraudulently obtained and is not valid.

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. Former spouses of abusive U.S. citizen or lawful permanent residents retain self-petitioning eligibility if the marriage was legally terminated during the two-year period immediately preceding the filing of the petition.

According to the evidence on the record, the petitioner married her lawful permanent resident spouse on August 12, 1983 in Bangladesh. Two children were born of the marriage. The record contains an affidavit signed by the petitioner's spouse indicating that he decided to divorce the petitioner "as per Islamic law and under existing Muslim Family Law Ordinance and execute[d the] divorce by saying 'First Talak, Second Talak, Third Talak' in the presence of [REDACTED] on 23rd June, 1995." The record also indicates that the petitioner initiated divorce proceedings in the United States in 2000 and that the petitioner's spouse signed a child support stipulation in which he acknowledged that divorce proceedings were pending as of December 2000. The petitioner filed the Form I-360 self-petition on July 3, 2003.

On appeal, counsel for the petitioner asserts that the Bangladesh divorce is invalid and that the petitioner's spouse submitted his divorce affidavit to Citizenship and Immigration Services (CIS) to disqualify his wife from obtaining derivative status on her husband's immigrant petition.

The director determined that the petitioner had been divorced from her spouse on June 23, 1995 and therefore no petitionable relationship existed between the petitioner and her spouse within two years of the filing of the petition. This portion of the director's decision shall be withdrawn.

Congress amended the Act when it enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Division C, 110 Stat. 3009 (September 30, 1996). Section 384(a)(1) of IIRIRA prohibits any Justice Department employee from making "an adverse determination of admissibility or deportability of an alien . . . using information furnished solely by" a spouse who has battered the alien or subjected the alien to extreme cruelty.

In a memorandum designed to inform all INS (now CIS) employees of their obligations under section 384 of IIRIRA, Paul Virtue, Acting Executive Associate Commissioner, provided the following guidance:

If an INS employee receives information adverse to an alien from the alien's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, the INS employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.

In the instant case, the abusive spouse provided CIS with a copy of his affidavit declaring that he had divorced the petitioner in Bangladesh in 1995. In the absence of independent corroborative information, CIS may not take action based on that information.

Nonetheless, the record shows that the petitioner initiated divorce proceedings in the state of New York in 2000. The case will be remanded to the director to request the petitioner to provide either her divorce decree or verifiable evidence that the divorce proceedings were terminated.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.