



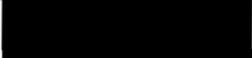
U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 12 2006

EAC 04 115 53053

IN RE:

Petitioner:



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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a native and citizen of the Philippines who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 [Secretary of Homeland Security] 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 petitioner filed the instant Form I-360 on March 8, 2004. At the time of filing, the petitioner submitted copies of her visa and Form I-94, Arrival and Departure Record, a domestic violence pamphlet from the Prince William County, Virginia police department with a handwritten note, her spouse's birth certificate from Albany, New York, a letter from the petitioner, a letter dated February 15, 2004, indicating that the petitioner was residing in the ACTS/Turning Points Domestic Violence Center, and the petitioner's marriage certificate.

The director found this supporting evidence was insufficient to establish the petitioner's eligibility and on January 4, 2005, issued a notice requesting the petitioner to submit evidence that she was subjected to battery or extreme cruelty by her spouse, that she resided with her spouse, that she entered into their marriage in good faith, and that she is a person of good moral character.

The petitioner responded to the director's request for evidence on February 26, 2005 and submitted a second statement, a letter from [REDACTED], Director of ACTS/Turning Points Domestic Violence Center, a copy of documents related to the petitioner's spouse's arrest for domestic assault and battery on the petitioner on March 28, 2004, a copy of the petitioner's emergency protective order request, police clearances from the Philippines, a copy of the petitioner's birth certificate, and photographs of the petitioner and her spouse on their wedding day. The petitioner also submitted additional copies of her marriage certificate, the pamphlet from the Prince William County police department, and the February 15, 2004 ACTS/Turning Points Domestic Violence Center letter that were previously submitted.

On May 24, 2005, the director denied the petition without issuing a Notice of Intent to Deny (NOID) as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii). The director's determination was based upon the determination that the petitioner failed to establish that she resided with her spouse, that she entered into the marriage in good faith, and that she is a person of good moral character.

On appeal, counsel submits a letter and additional documents, to include a statement from the petitioner, an affidavit from an acquaintance of the petitioner, two photographs of the petitioner and her spouse, a certificate for marriage counseling, a copy of the petitioner's divorce decree, a military pay order, an application for assignment to housing, a letter from the petitioner's former spouse, and police clearances from police departments in Pennsylvania and Virginia. The petitioner provides no explanation for her failure to submit such evidence at the time of filing or when requested to do so by the director in his request for evidence. In cases where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the NOID required by regulation, we reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. Upon review, we find the petitioner's appellate submission has overcome all of the director's findings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden.

**ORDER:** The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.