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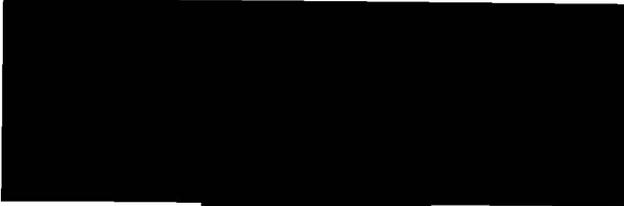
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 01 2006
EAC 05 169 53010

IN RE: Petitioner: [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.

Robert P. Wiemann, Chief
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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

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

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a United States citizen within the past 2 years and –

* * *

(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.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of China who entered the United States on September 21, 2001 as a nonimmigrant visitor (B-2). On July 29, 2002, the petitioner married [REDACTED], a U.S. citizen, in Puerto Rico. On December 23, 2004, the former couple was divorced by order of the San Juan Court in Puerto Rico. On May 23, 2005, the petitioner filed this Form I-360. On August 10, 2005, the director issued a notice requesting additional evidence that the petitioner married Mr. [REDACTED] in good faith. The petitioner submitted further evidence on October 11, 2005. On December 1, 2005, the director denied the petition because the record failed to establish the petitioner's good faith marriage to Mr. [REDACTED]. The petitioner, through counsel, timely appealed.

On appeal, counsel insists that the lack of evidence demonstrates Mr. [REDACTED] control over all aspects of the petitioner's life. On the Form I-290B counsel indicated that she would submit a brief and/or evidence to the AAO within 30 days. Counsel filed the appeal on December 27, 2005. On June 14, 2006, the AAO notified counsel that it had received nothing further and asked counsel to submit any brief or additional evidence within five business days. On June 14, 2006, counsel responded by facsimile and stated that she did not file a brief or evidence in support of the appeal as she indicated on the Form I-290B.

We concur with the director's conclusion and find that counsel's claim on appeal does not overcome the ground for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Good Faith Entry into the Marriage

As evidence of her good faith marriage, the petitioner initially submitted her own statement, a psychological assessment by [REDACTED] and a statement from her friend, [REDACTED]

The petitioner states that she met Mr. [REDACTED] at the restaurant where they both worked. She explains that he cooked for her, taught her Spanish, brought her home after work and that they celebrated together on their days off. She states that they fell in love and got married and that the first three months of their marriage were very intimate. The petitioner does not further describe her courtship, marriage or any of her shared experiences with Mr. [REDACTED] apart from his abuse. Ms. [REDACTED] brief description of the former couple's courtship, as related to her by the petitioner, is consistent with the petitioner's own, general statements. Mr. [REDACTED] states that he went out with the former couple on various social occasions and that the petitioner and Mr. [REDACTED] lived together as husband and wife. Ms. [REDACTED] and Mr. [REDACTED] provide no further details regarding the petitioner's alleged good faith in marrying Mr. [REDACTED] or the former couple's marital relationship, apart from the abuse.

In response to the director's request for additional evidence, the petitioner submitted a copy of a wedding card addressed to the former couple; a copy of one photograph of the former couple; copies of the former couple's Banco Popular cards, but no evidence that she or Mr. [REDACTED] actually used the account; and a statement from [REDACTED] who reports that he went out with the former couple when they were working at the same restaurant, that they were a happy couple and that he once visited their home. The petitioner also submitted a letter dated September 8, 2005 in which she explains that when she escaped from Mr. [REDACTED] she was so frightened that she did not have time to collect things and that when she later returned to his house, he had thrown away all of their things.

We concur with the director's determination that the evidence submitted below does not establish the requisite good faith marriage and we do not repeat her discussion here. The present record does not demonstrate that the petitioner married Mr. [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely 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 that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

[REDACTED]