

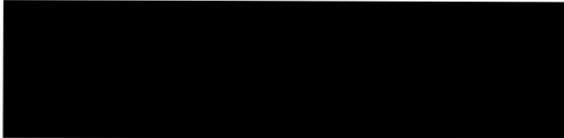
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U.S. Citizenship  
and Immigration  
Services

B9



FILE: [REDACTED]  
EAC 05 128 52395

Office: VERMONT SERVICE CENTER

Date: AUG 07 2006

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:

SELF-REPRESENTED

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 marriage with her U.S. citizen husband in good faith.

On appeal, the petitioner submits a statement 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).

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 the Philippines who entered the United States on February 17, 2004 as the nonimmigrant spouse of a U.S. citizen (K-3). On September 17, 2002, the petitioner married [REDACTED] a U.S. citizen, in the Philippines. On March 31, 2005, the petitioner filed this Form I-360. On July 16, 2005, the director requested, *inter alia*, additional evidence of the petitioner's good faith marriage to Mr. [REDACTED]. The petitioner submitted additional evidence on August 15, 2005. On October 11, 2005, the director denied the petition because the record failed to establish that the petitioner married Mr. [REDACTED] in good faith. The petitioner timely appealed.

On appeal, the petitioner submits additional evidence and repeats her claims that she married Mr. Shull because she loved him and that they lived together as husband and wife in the United States. The petition will be remanded for consideration of the evidence submitted on appeal as well as evidence in the record not previously addressed by the director. In addition, the case 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 Marriage*

As evidence of her good faith marriage to Mr. [REDACTED] the petitioner initially submitted her March 16, 2005 affidavit and photographs of herself and Mr. [REDACTED]. The photographs picture the former couple at their wedding and on two other occasions, but do not independently establish the petitioner's good faith in marrying Mr. [REDACTED]. In her affidavit, the petitioner explains that she met Mr. [REDACTED] in 2000 through a pen pal agency in Orlando, Florida and that they exchanged letters and pictures over the next two years, but that Mr. [REDACTED] later destroyed the letters and pictures during an argument. The petitioner states that Mr. [REDACTED] applied for a fiancée visa on her behalf, which was denied. On appeal, the petitioner submits a copy of the former Immigration and Naturalization Service's decision denying Mr. [REDACTED]'s Form I-129F petition for alien fiancée because he had not met the petitioner in person.

The petitioner reports that Mr. [REDACTED] later went to the Philippines where they met for the first time and were married. The petitioner states that Mr. [REDACTED] stayed in the Philippines for one month and arranged for her to join him in the United States upon his return. The petitioner explains that she moved in with Mr. [REDACTED] at his apartment in Winter Park, Florida and that Mr. [REDACTED] helped her find a job at the University of Central Florida where he also worked. The petitioner does not further discuss the former couple's courtship, wedding, marital relationship and shared experiences, apart from Mr. [REDACTED]'s abuse.

In response to the director's request for additional evidence, the petitioner submitted a letter dated February 24, 2005 from [REDACTED] of the University of Central Florida, who confirms that the petitioner is employed by the University and that "[u]pon hiring, the emergency contact

information listed was [REDACTED] (spouse) with an address of [REDACTED] Winter Park, FL 32792." Attached to Ms. [REDACTED]'s letter is a printout of the petitioner's emergency contact information that lists Mr. [REDACTED] as her primary contact. The director discounted this evidence because although M [REDACTED] is listed as "Relationship to Employee: Spouse," the box following the word "Spouse" is not checked, but the box following the words "Primary Contact" is checked. On appeal, the petitioner submits a notarized printout from the University's database entitled "Emergency Contact Detail," which clearly lists Mr. [REDACTED] as the petitioner's contact and as her spouse.

In response to the director's request, the petitioner also submitted photographs of the former couple, Mr. [REDACTED]'s Western Union card and copies of two affidavits signed by Mr. [REDACTED] regarding his legal capacity to contract marriage in the Philippines. We concur with the director's determination that these documents do not establish the petitioner's own good faith in marrying Mr. [REDACTED] and do not repeat the director's discussion here.

On appeal, the petitioner states:

I swear on the bible that I married [REDACTED] in good faith. While the opportunity to live in the United States that [Mr. [REDACTED]] proposal presented was exciting, the real reason I accepted to marry [him] was because of a growing love I felt for him resulting from our exchanges in letters and telephone calls that revealed a kind, gentle and caring human being. My feelings of love for [Mr. [REDACTED]] matured when he came to the Philippines and we made one-on-one contact and his interaction with my family who approved of him highly. Once in the United States I began a very happy home life with [Mr. [REDACTED]]. [He] and I continuously lived at the same residence, [he] found employment for me at UCF as a custodian, [he] declared me as a spouse on his automobile insurance forms and he helped me open an account at the same bank he used.

In addition to the printout listing Mr. [REDACTED] as the petitioner's spouse and emergency contact, the petitioner submits the following additional evidence on appeal: an Internal Revenue Service tax return transcript showing that the petitioner and Mr. [REDACTED] filed their 2003 income tax return as married filing jointly on April 15, 2004; an affidavit from [REDACTED] a Western Union operator in the Philippines who states that between 2002 and 2003, the petitioner was a regular recipient of money transfers from [REDACTED]; a letter dated October 30, 2005 from [REDACTED] a neighbor of the petitioner and [REDACTED] from June 2004 to January 2005 who describes them as a "loving married couple;" a copy of one page of an automobile insurance policy statement, which was signed by Mr. [REDACTED] on February 21, 2004 and lists the petitioner as his spouse; and a letter dated December 4, 2004 from SHPS addressed to "[REDACTED] and Family." These documents provide relevant evidence of the petitioner's allegedly good faith marriage and should be considered by the director upon remand.

In addition, the petitioner's administrative record contains copies of 2002 and 2003 federal income tax forms for the petitioner and Mr. [REDACTED] as married joint filers and a tax preparer guarantee notice that lists the petitioner and Mr. [REDACTED] as the clients. Mr. [REDACTED] and the petitioner did not sign the copies of the 2002 and 2003 tax returns and only Mr. [REDACTED] signed the guarantee notice. The documents were

submitted with Mr. [REDACTED] Form I-864 affidavit of support, which was filed with the petitioner's Form I-485 application to adjust status. These documents are relevant to the issue of the petitioner's purportedly good faith marriage and should also be considered by the director on remand.

On appeal, the petitioner also submits documents related to Mr. [REDACTED] Form I-129F and Form I-130 petitions filed on the petitioner's behalf as well as documents addressed to the petitioner individually at the former couple's residence in Winter Park, Florida. These documents are not probative of the petitioner's own good faith in marrying Mr. [REDACTED]

Apart from the consideration of the tax documents and the relevant evidence submitted on appeal, the case will also 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 consideration of the aforementioned relevant evidence and, if necessary, issuance of a NOID, which would 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.