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U.S. Citizenship  
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FILE: [Redacted]  
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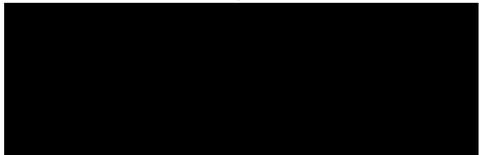
Office: VERMONT SERVICE CENTER

Date: AUG 14 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 husband in good faith.

On appeal, counsel submits a letter 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 El Salvador. On her Form I-360 petition, she indicated that she last entered the United States on March 5, 1998 without inspection. On December 10, 1999, the petitioner married [REDACTED], a U.S. citizen, in San Francisco, California. Mr. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf, but later withdrew the petition. On July 18, 2002 the petitioner's Form I-485 application to adjust status was denied due to the withdrawal of [REDACTED] petition. The petitioner filed this Form I-360 on July 26, 2005. On September 28, 2005, the director requested evidence of the petitioner's good faith marriage to Mr. [REDACTED]. The petitioner submitted additional evidence on October 24, 2005. On December 13, 2005, the director denied the petition because the record failed to establish the requisite good faith marriage. The petitioner, through counsel, timely appealed.

On appeal, counsel asserts that the petitioner met her burden of proof and submits additional statements from the petitioner and her mother. We concur with the director's conclusion and find that counsel's claims and the additional testimony submitted on appeal do not overcome the ground for denial. Nonetheless, 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*

The petitioner initially submitted her July 18, 2005 declaration in which she states that she met Mr. Miranda through a friend, that they were friends for three months, dated for three months, lived together for three months and then got married on December 10, 1998. However, the petitioner's marriage certificate shows that she and [REDACTED] were married a year later on December 10, 1999. The petitioner does not further describe how she met [REDACTED] their courtship, wedding or any of their shared experiences, apart from [REDACTED] abuse. The petitioner states that she and Mr. [REDACTED] had a daughter who was born in July 2001, but did not survive. The petitioner does not submit the child's birth and death certificates showing that she and [REDACTED] were the child's parents.

In response to the director's request for further evidence, the petitioner submitted a letter from her mother and photographs of herself and [REDACTED] at their wedding and on three other occasions. [REDACTED] the petitioner's mother, explains that the petitioner and [REDACTED] began living together after dating for a few months and got married after living together for a year. Her description contradicts the petitioner's statement that she and [REDACTED] lived together for only three months before their marriage and the petitioner does not explain this discrepancy on appeal. [REDACTED] further states, "[REDACTED] addressed to me and told me of the decision that both have made, he confessed me that he loved [the petitioner] and that he was secure of her love." Yet [REDACTED] does not describe the petitioner's own feelings and behavior regarding her marriage, as observed by Ms.

The photographs confirm that a wedding took place and that the former couple was together on three other occasions, but the pictures do not independently establish the petitioner's good faith in marrying

In her February 4, 2006 declaration submitted on appeal, the petitioner explains that she has no joint documents with because he destroyed all the documents when they separated. The petitioner repeats her brief description of the former couple's courtship and marriage, as well as the birth of their daughter in July 2001, but provides no probative details about their courtship, wedding or any of their shared experiences. The petitioner also provides no documentation of the birth and death of the former couple's daughter. In her February 4, 2006 declaration submitted on appeal, again offers a brief description of the former couple's relationship that contradicts the petitioner's statements regarding their pre-marital joint residence. states that the petitioner and Mr. were happy, had many plans for their future, were very good to her and stayed in her house for a month or so "[w]hen the baby was born in July 2001." provides no further details regarding the birth of their daughter or other aspects of the petitioner's allegedly good faith marriage.

The statements of the petitioner and her mother provide no substantive, detailed description of the petitioner's purported good faith in marrying and are consequently of little probative value. The photographs alone do not establish the petitioner's good faith marriage. While the petitioner explains why she does not have joint documentation with her administrative file contains a copy of the former couple's joint federal income tax return for 2000. The petitioner submits no evidence of any other joint tax returns in the form of; for example, a tax transcript from the Internal Revenue Service. The petitioner also provides no evidence of the birth and death of her and daughter in July 2001. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record does not demonstrate that the petitioner entered into marriage with 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.