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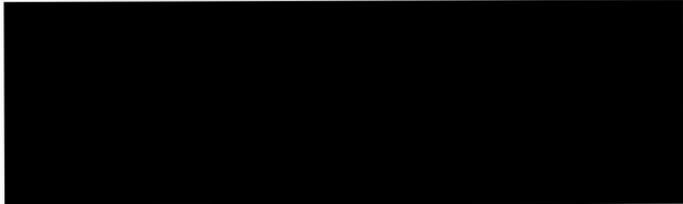
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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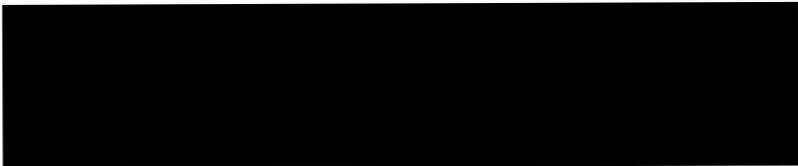


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 21 2006**
EAC 04 180 53614

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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

On appeal, counsel submits a brief and copies of documents submitted below.

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 evidence will be considered.

The petitioner in this case is a native and citizen of the Philippines who entered the United States on May 29, 1998 as a nonimmigrant fiancée (K-1) pursuant to an approved Form I-129F petition for alien fiancée filed by W.M.* On June 7, 1998 the petitioner married G.S.,* a U.S. citizen, in Nevada. On March 3, 2004 Citizenship and Immigration Services (CIS) served the petitioner with a Notice to Appear for removal proceedings charging her as deportable under section 237(a)(1)(G)(ii) of the Act. The petitioner remains in proceedings before the Reno, Nevada Immigration Court and her next hearing is scheduled for September 13, 2006. On May 28, 2004, the petitioner filed this Form I-360. On August 15, 2005, the director requested additional evidence of the petitioner's good faith marriage to Mr. S. The petitioner submitted further evidence on November 16, 2005. On January 9, 2006, the director denied the petition because the record failed to establish the requisite good faith marriage.

On appeal, counsel asserts that the director assessed certain documents individually, disregarded other evidence and did not address the cumulative effect of all the relevant evidence. We concur with the director's conclusion and find that counsel's claims on appeal do 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 Marriage

With her Form I-360 and in response to the director's request for additional evidence, the petitioner submitted the following photocopied documents:

- A Realtor Exclusive Buyer Representation Agreement dated September 4, 1998 and signed by both the petitioner and Mr. S.
- A Bank of America Short Form Deed of Trust dated May 11, 1999 listing the Mr. S and the petitioner as the trustor for their residential property in Sparks, Nevada. Both the petitioner and Mr. S signed this document.
- The related Full Reconveyance dated August 5, 2002, which lists the petitioner and Mr. S as the trustors of the above Deed of Trust.
- A Real Estate Purchase and Sale Agreement dated September 4, 1998 and listing the petitioner and Mr. S as the buyers. Both the petitioner and Mr. S signed this agreement.

* Name withheld to protect the individual's identity.

- A blank Bank of America check for a joint account of the petitioner and Mr. S.
- A Declaration of Trust made by Mr. S, dated August 29, 2001 and listing the petitioner as a beneficiary.
- Eight photographs of the petitioner and Mr. S at their wedding and on five other occasions. The purported image of the petitioner is indiscernible in three of the photocopied photographs. The pictures verify that a wedding took place, but provide no probative evidence of the petitioner's good faith in entering the marriage.
- The former couple's Nevada marriage certificate and their Report of Marriage by the Philippine Consulate General in San Francisco dated May 11, 2000. These documents establish that a marriage occurred, but provide no probative evidence of the petitioner's good faith in entering the marriage.
- A Bank of America statement of 1998 interest income of \$25.83 from the former couple's joint account, which is jointly addressed to the petitioner and Mr. S
- The first page of a statement for the joint Bank of America account for the period of August 6 through September 3, 1998.
- Cards identifying the petitioner and Mr. S individually as volunteers at the VA Medical Center in Reno, Nevada. The cards do not indicate that the petitioner and Mr. S volunteered together.
- A Costco Membership renewal notice dated February 3, 2004 and listing Mr. S as the cardholder and the petitioner as his wife. This notice is addressed to Mr. S at the former couple's residential address.
- The petitioner's Costco Wholesale card and Mr. S's Price Costco membership card. These cards state different identification numbers, although the petitioner's card appears to relate to the account identified in the aforementioned Costco renewal notice.
- Mr. S's American Legion membership cards and the petitioner's American Legion Auxiliary membership cards. The cards do not indicate a joint membership for the former couple or provide any relevant information about the petitioner's alleged good faith marriage to Mr. S.
- Two envelopes jointly addressed to the petitioner and Mr. S with partially illegible postmark dates, one largely illegible envelope addressed to the petitioner at former couple's residential address, one envelope addressed to Mr. S with no postmark and five postmarked envelopes addressed to the petitioner at the former couple's residential address, and a letter addressed to

Mr. S concerning his retirement account, which does not mention or identify the petitioner in any manner. While these documents are relevant to the former couple's joint residence, they are not probative of the petitioner's good faith in marrying Mr. S.

- A March 30, 2004 letter from [REDACTED] who states that she has known the petitioner since she married Mr. S and that the petitioner is a faithful and caring wife who took care of Mr. S after he had a car accident. [REDACTED] provides no further details regarding the petitioner's marital relationship with Mr. S as observed by her and her letter is consequently of little probative value.

The record thus contains evidence that the petitioner and Mr. S owned and purchased property together, had a joint bank account and a shared Costco membership, and that Mr. S named the petitioner as a beneficiary of his personal trust. However, this evidence does not outweigh the petitioner's own cursory description of how she met and married Mr. S. In her affidavit, the petitioner states:

I entered the United States on a Fiancé[e] visa at San Francisco, CA. On 5/29/1998[,] My I-129F Petitioner changed his mind to get married and we ended up going separate ways but on good terms. I got married to [Mr. S], a U.S. citizen on June 7, 1998 at [REDACTED] at the Nugget in Sparks, NV. I married [Mr. S] for love and commitment in good faith and not for any other reasons.

The petitioner does not further describe how she met Mr. S, their courtship, wedding and any of their shared experiences, apart from Mr. S's abuse. Most notably, the petitioner fails to credibly explain how she married Mr. S in good faith when their marriage took place just one week after her arrival as the beneficiary of a fiancée petition filed by another man. The petitioner does not state when she first met Mr. S and the record contains no evidence that the former couple was acquainted before the petitioner's arrival in the United States.

On appeal, counsel claims that the director did not consider Mr. S's personal trust naming the petitioner as a beneficiary. Counsel is mistaken. The director addressed the trust on page two of her decision. On appeal, counsel further contends that the director did not address the cumulative effect of all the relevant documentation. To the contrary, the director discussed the relevant documentary and testimonial evidence and determined that the record as a whole did not establish the petitioner's good faith marriage. Accordingly, we concur with the director's determination that the petitioner failed to establish her good faith entry into marriage with Mr. S, 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 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.