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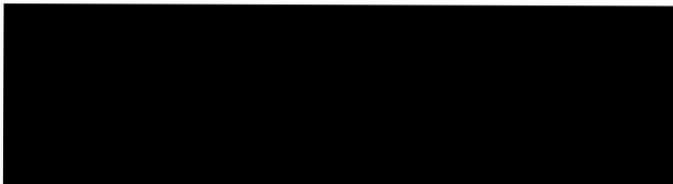
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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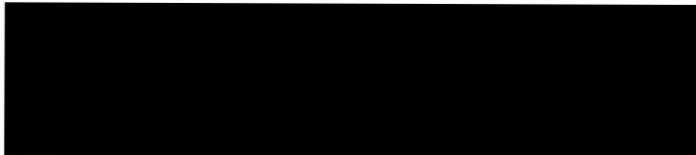
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**AUG 21 2006**

IN RE: Petitioner: [Redacted]

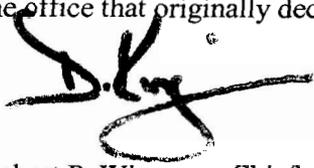
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

  
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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, counsel submits an additional affidavit of the petitioner.

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 Trinidad who entered the United States on October 6, 2000 as a nonimmigrant visitor. On March 8, 2004, the petitioner married [REDACTED], a U.S. citizen, in New York City. On May 18, 2005, the petitioner filed this Form I-360. On May 27 and August 30, 2005, the director requested evidence of the petitioner's good faith marriage to Mr. Ferracane and the petitioner, through counsel, timely submitted documents on July 11 and October 21, 2005. On December 21, 2005, the director denied the petition because the record failed to establish the requisite good faith marriage.

On appeal, counsel submits an additional affidavit of the petitioner and asserts that the director erroneously assessed certain documents and disregarded other relevant evidence. On the Form I-290B Notice of Appeal, counsel stated that she would send a brief and/or more evidence to the AAO within 30 days. Counsel dated the appeal January 17, 2006. On July 27, 2006, the AAO notified counsel by facsimile that it had received no further brief or evidence and asked counsel to submit copies of any such documents within five business days. To date, the AAO has received no response from counsel.

We concur with the director's determination that the evidence submitted below did not establish the petitioner's good faith marriage to [REDACTED]. However, 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). On remand, the director may also consider the petitioner's additional affidavit submitted on appeal.

### *Good Faith Marriage*

In response to the director's May 27, 2005 request for evidence, the petitioner submitted a DirecTV bill dated July 10, 2004 and a Consolidated Edison Company account statement dated July 12, 2004. The DirecTV bill lists [REDACTED]'s name under the "account summary" section, but the bill is jointly addressed to the petitioner and [REDACTED] at [REDACTED] in Brooklyn, New York. The Consolidated Edison Company statement is also jointly addressed to the former couple at this residence. On appeal, counsel asserts that the director erroneously concluded that the documents indicated that the petitioner's name was added to the two accounts. While it is true that the DirecTV bill and the Consolidated Edison statement do not explicitly state that the petitioner's name was added to the account, the petitioner states (in her affidavits submitted below and on appeal) that she moved into [REDACTED] apartment at the [REDACTED] address and the present record does not indicate when the accounts were either jointly opened by the former couple or when the petitioner's name was added to [REDACTED] accounts for his apartment.

The petitioner also submitted copies of an undated envelope from Chase and a June 25, 2004 letter from the Social Security Administration individually addressed to [REDACTED] at the [REDACTED] address; as well as a September 3, 2004 letter from BankCard Services and a February 23, 2005 letter from Fidelis Care that are both individually addressed to the petitioner at the same residence. On appeal, counsel contends that the director did not address this evidence. We find no error in the director's failure to discuss these documents. While they may be relevant to the issue of the former couple's joint residence, the individually addressed envelope and letters are not probative of the petitioner's good faith in marrying [REDACTED].

In response to the director's August 30, 2005 request, the petitioner submitted her October 6, 2005 affidavit; copies of four electricity bills jointly addressed to the former couple and dated between January and May, 2005; a copy of a 2004 Christmas card jointly addressed to the former couple and copies of the documents discussed above. In her October 6, 2005 affidavit, the petitioner states:

I first met my husband [REDACTED] in September 2003 at a park near my house. Our relationship moved very fast. There was an instant connection between us and within three weeks my granddaughter and I moved in with [REDACTED]. . . I was completely entranced by [his] care and consideration for me and my granddaughter. He was so loving and attentive to all our needs that I was truly looking forward to having someone to raise my granddaughter alongside me. He seemed so giving and full of love and I was eager to have a normal and healthy family. On March 8, 2004 [REDACTED] and I got married. We were happy. We lived with my granddaughter . . . and his adopted son . . . .

The petitioner does not further describe how she met [REDACTED] their courtship, wedding or any of their shared experiences (apart from [REDACTED] abuse) in her October 6, 2005 affidavit. On appeal, the petitioner submits an affidavit dated January 17, 2006 in which she provides some details regarding the former couple's courtship and marital relationship. The petitioner further describes her first meeting with [REDACTED] their first date, and holidays and events that she and [REDACTED] celebrated with his family and her friends between September 2003 and April 2004. The petitioner also states that she and [REDACTED] have a joint account at the North Fork bank, but that the bank refused to give her a letter regarding the account without [REDACTED]'s presence.

The director determined that the evidence submitted below did not establish the petitioner's good faith marriage and 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 and for consideration of the petitioner's affidavit submitted on appeal.

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.