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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9

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[REDACTED]

FILE: [REDACTED]
EAC 06 023 50300

Office: VERMONT SERVICE CENTER

Date: AUG 21 2006

IN RE: Petitioner: [REDACTED]

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

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. Wichmann, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. lawful permanent resident.

On appeal, counsel submits additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or the alien's child was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced a U.S. lawful permanent resident may still self-petition for immigrant classification under section 204(a)(1)(B)(ii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a lawful permanent resident 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 lawful permanent resident spouse.

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

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

(i) *Basic eligibility requirements.* A spouse may file a self-petition under . . . section 204(a)(1)(B)(ii) . . . of the Act for his or her classification as . . . a preference immigrant if he or she:

* * *

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on [a spousal] relationship [to the U.S. lawful permanent resident].

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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner in this case is a native and citizen of Grenada who entered the United States on April 6, 1995 as a nonimmigrant visitor. On May 10, 1980, the petitioner married her former husband in Grenada. Her former husband became a U.S. lawful permanent resident in 1997. On October 21, 2005, the petitioner filed this Form I-360. On January 9, 2006, the director denied the petition because Citizenship and Immigration Services (CIS) records showed that the petitioner's marriage was legally terminated in 1994. The director provided the petitioner with a copy of the divorce judgment. The petitioner, through counsel timely appealed.

On appeal, counsel asserts, "the judgment of divorce is void/fraudulent and may not be relied upon." Counsel submits a statement from the petitioner and copies of court documents in the former couple's divorce case. We concur with the director's determination and find that counsel's claim and the evidence submitted on appeal do not overcome the ground for denial. Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for preference immigrant classification under section 203(a)(2)(A) of the Act based on her relationship with her former husband and that the petitioner is a person of good moral character. 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).

Qualifying Relationship and Eligibility for Preference Immigrant Classification

The petitioner submitted a copy of her marriage certificate and her own written statements affirming her marital relationship. In her "Statement of Facts" and "Affidavit in Support," the petitioner does not indicate that she and her former husband were divorced. However, with the director's decision, the petitioner was provided with a copy of the former couple's Judgment of Divorce entered on March 16, 1994 by the Supreme Court of New York, New York County.¹ The director denied the petition because the petitioner was divorced over two years before she filed the Form I-360 and consequently did not have a qualifying relationship with her former spouse pursuant to section 204(a)(1)(B)(ii)(CC)(bbb) of the Act.

In her January 26, 2006 statement submitted on appeal, the petitioner asserts that her former husband fraudulently obtained their divorce because she was not served and did not sign any divorce papers. The petitioner points out that the affidavit of service states that she was served in Yonkers, New York, but the judgment of divorce states that she was served "without this state." Although the court documents contain this inconsistency, the petitioner submits no evidence that the discrepancy would render the divorce invalid under New York law. A divorce must be valid under the laws of the jurisdiction which terminated the marriage. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982); *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974); *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974); *Matter of Darwish*, 14 I&N Dec. 307 (BIA 1973). The petitioner submits no evidence that the divorce judgment has been invalidated, withdrawn or modified; or that it is otherwise considered invalid under New York law. Accordingly, the record shows that the petitioner's marriage was legally terminated on March 16, 1994, over three years before her former spouse obtained lawful permanent residency in the United States and over 11 years before this petition was filed. Consequently, the petitioner did not have a qualifying spousal relationship pursuant to section 204(a)(1)(B)(ii)(II)(CC)(bbb) of the Act.

Beyond the director's decision, the record also fails to establish that the petitioner was eligible for preference immigrant classification under section 203(a)(2)(A) of the Act, as the spouse of a U.S. lawful permanent resident based on her relationship with her former husband. The former couple was divorced over three years before the petitioner's former husband obtained lawful permanent residency in the United States. Consequently, the petitioner was ineligible for preference immigrant classification as his spouse, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

Good Moral Character

In her "Affidavit in Support," the petitioner states that she is a law-abiding person of good moral character. The petitioner also submitted certificates awarded to her in the United States for various educational, training and work-related accomplishments. However, the petitioner failed to submit local

¹ The director mistakenly stated the date of divorce as January 31, 1994. The Judgment of Divorce states that [REDACTED] commenced his action for divorce on January 31, 1994, but that the Judgment was filed on March 16, 1994.

police clearances or state criminal background checks to support her attestation of her good moral character, as specified in the regulation at 8 C.F.R. § 204.2(c)(2)(v), and the petitioner does not state that such clearances or checks are unavailable. Accordingly, the present record does not demonstrate the petitioner's good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

The present record does not demonstrate that the petitioner had a qualifying spousal relationship with a U.S. lawful permanent resident or that she is a person of good moral character. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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.