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



U.S. Citizenship
and Immigration
Services

[Redacted]

B9

FILE: [Redacted]
EAC 03 097 53547

Office: VERMONT SERVICE CENTER

Date: DEC 07 2006

IN RE: Petitioner: [Redacted]

PETITION: Petition for 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

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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, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a Notice of Intent to Revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On February 4, 2004, the director approved the petition for classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by a United States citizen.

On April 20, 2006, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because the petitioner did not have a qualifying relationship with a U.S. citizen at the time her petition was filed. The petitioner submitted no evidence of her former husband's immigration status with her petition. However, the petition was approved based on information incorrectly retrieved from Citizen and Immigration Services (CIS) records. The NOIR informed the petitioner that upon further review, CIS records showed that her former husband lawfully entered the United States, but did not maintain his non-immigrant status or obtain lawful permanent residency or citizenship in the United States. The NOIR granted the petitioner 60 days to submit evidence of her former husband's immigration status. The petitioner timely responded to the NOIR, but the evidence submitted failed to establish that her former husband was a citizen or lawful permanent resident of the United States. Accordingly, the director revoked the approval of the petition on June 29, 2006.

On appeal, the petitioner states that she does not know what else she can do and requests oral argument before the AAO. CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identifies no unique factors or issues of law to be resolved and the written record of proceedings fully represents the facts and issues in this matter. Consequently, the petitioner's request for oral argument is denied.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director's revocation of that approval.

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 or a child of 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The regulation at 8 C.F.R. § 103.2(b)(17), states, in pertinent part:

If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser’s status, the Service will attempt to electronically verify the abuser’s citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser’s immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Taiwan, the Republic of China, who first entered the United States on December 10, 1992 as a nonimmigrant student (F-1). On August 1, 1994, the petitioner married [REDACTED], a native of Taiwan, in California. On August 12, 2002, the former couple was divorced. The petitioner filed the instant Form I-360 on February 4, 2003. In Part 7, Section A on the Form I-360, the petitioner checked “Other” in regards to her husband’s immigration status and stated, “He used the identities of other people. I don’t know he is [sic] U.S. citizen or not.” With the Form I-360, the petitioner submitted no documentation or further testimonial evidence regarding her former husband’s immigration status or citizenship.

Nonetheless, the director approved the petition based on information incorrectly retrieved from CIS records. After realizing the error, the director issued the NOIR. In response to the NOIR, the petitioner submitted a second letter from Congressman John M. Spratt, Jr. and her second, undated letter in which she explained that her husband told her he worked for the Federal Bureau of Investigation (FBI), she believed him and she had no information about his immigration status. The

record also contains a letter from Detective Darrell T. Russell of the Office of the Sheriff of Saint Lucie County, Florida, who states that the petitioner's former husband committed identify theft and fled the State rather than face criminal charges and that the petitioner fully cooperated with the investigation. Yet Detective Russell provides no information about the immigration status of the petitioner's former husband.

On appeal, the petitioner submits a third letter from Congressman Spratt dated July 12, 2006, in which he states his belief that Detective Russell's letter supports "her petition in itself." Again, Detective Russell provides no probative information indicating that the petitioner's former husband was a lawful permanent resident or citizen of the United States. The petitioner submits no further evidence or additional testimony on appeal. The record in this case shows that upon realization of the initial error, the director attempted to electronically verify the immigration status of the petitioner's former husband through information in CIS computerized records. However, these records show that the petitioner's former husband never obtained lawful permanent residency or citizenship in the United States.

The petitioner has not established that she had a qualifying relationship with a lawful permanent resident or a citizen of the United States. She is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act and the approval of her self-petition must be revoked.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.