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U.S. Citizenship
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Services

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FILE:

[Redacted]
EAC 05 033 53118

Office: VERMONT SERVICE CENTER

Date: JUN 01 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.

2 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Haiti who entered the United States as a B-2 nonimmigrant visitor on August 20, 1996, and now seeks classification as a special 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 her United States citizen spouse.

The director denied the petition, finding that the petitioner had failed to establish that she entered into the marriage in good faith.

On appeal, the petitioner asserts that the director abused his discretion by denying the petition.

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)(ix) states, in pertinent part:

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.

In this case, the record shows that the petitioner married [REDACTED] a U.S. citizen, on February 25, 2000 in Cambridge, Massachusetts. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on June 29, 2000. The petitioner filed a Form I-485 concurrently with the Form I-130. On July 28, 2003, the director denied the Form I-130 petition.

The petitioner filed her Form I-360 on November 12, 2004. On April 21, 2005, the director issued a notice (RFE) informing the petitioner that the evidence submitted with her Form I-360 was insufficient to establish her eligibility and requested documentation that she had married in good faith. The petitioner responded to the RFE on September 19, 2005. On October 5, 2005, the director denied the instant petition.

On appeal, the petitioner asserts that director abused his discretion by finding that she has met her burden of proof in establishing all but one of the eligibility requirements. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that she entered into the marriage in good faith. However, the case will be remanded for issuance of 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 issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. As evidence that she entered into the marriage in good faith, the petitioner submitted the following evidence:

- A brief statement from the petitioner.
- Tax documents for the year 2000.
- A letter from a bank.
- Photocopies of photographs.
- A photocopy of a card.

On appeal, the petitioner asserts that because she was in an abusive relationship with her spouse, she has little evidence that she entered into the marriage in good faith. This reason does not explain why the petitioner failed to provide Citizenship and Immigration Services (CIS) with details about her courtship, wedding, and wedding celebration, if any. She provided no details about their joint residence and experiences. The tax documents are unsigned. The petitioner failed to establish that she filed the tax returns with the Internal Revenue Service; hence, they have little evidentiary value. The bank letter shows that the petitioner and her spouse opened an account in March 2000 and in

April 2000, the saving account balance was \$2.53 and the checking account was overdrawn. Mere balances without transaction history is insufficient evidence. While the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage.

Consequently, the present record does not establish that the petitioner entered into the marriage in good faith. Accordingly, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) and the petition must be denied. However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), 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.