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



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 01 2006
EAC 04 210 53212

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.

3 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Guyana who is seeking 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 the battered spouse of a United States citizen.

On September 7, 2005, the director denied the petition because the record failed to establish that the petitioner had entered into the qualifying relationship in good faith.

On appeal, counsel for the petitioner submits additional evidence and a brief.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

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

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in 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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on July 9, 2001 in Brooklyn, New York. It is noted that there is a twenty-year age differential between the petitioner and her spouse. The petitioner filed a Form I-485 on March 29, 2002.

The petitioner filed her Form I-360 on July 9, 2004. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on March 12, 2005, the director issued a notice requesting the petitioner to submit evidence that she resided with her spouse, that she entered into their marriage in good faith and that she is a person of good moral character. On March 16, 2005, the petitioner submitted additional evidence.

The issue to be addressed in this proceeding is whether the petitioner established that she entered into the qualifying marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith.

The evidence in the record relating to a good faith marriage is as follows:

- A marriage certificate.
- Photographs of the petitioner and her spouse.
- Documentation indicating that the petitioner and her daughters resided with the petitioner's spouse, [REDACTED].
- The petitioner's affidavit dated September 27, 2005 in which she states she met [REDACTED] through a friend of her sister and that they developed a relationship via long distance.

- The petitioner's daughter, [REDACTED] wrote in an affidavit that "my mom entered into this marriage with the best intentions."
- The petitioner's other daughter, [REDACTED] wrote, [REDACTED] was like my father."
- A statement written by a friend of the petitioner, [REDACTED] indicating that the petitioner became acquainted with [REDACTED] in the summer of 1999 and that [REDACTED] traveled to Guyana in 2000 to meet the petitioner and to bring her and her daughters to the United States.¹
- A photograph of the petitioner's store in Guyana.
- A document showing that the petitioner had a license to sell goods at her store.
- An affidavit written by [REDACTED] saying she witnessed the marriage.
- A statement from the petitioner's cousin, [REDACTED] saying that the petitioner met [REDACTED] after a friend showed a photograph of the petitioner to [REDACTED] and that he immediately went to Guyana to meet the petitioner.

Wedding pictures and a marriage certificate are merely evidence of a marriage. They are not evidence of the petitioner's intentions at the time of the marriage. In her affidavit, the petitioner stated that she met [REDACTED] through a friend of her sister and that they developed a relationship via long distance. She does not indicate exactly when they became acquainted with one another. The petitioner provided scant details about her courtship, marriage ceremony, celebration, if any, and shared experiences. The affidavit is vague as to when they met and how the relationship developed. She provides details about abuse only. Affidavits from the petitioner's daughters have little probative value. Similarly evidence that the petitioner and her daughters resided with [REDACTED] is not sufficient evidence that the petitioner entered into the marriage in good faith.

We concur with the director's determination that the petitioner failed to establish that she entered into the marriage in good faith. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an 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 his/her case.

¹ In fact, the petitioner and her daughters entered the United States in March 2001 and the petitioner wed Mr. Gibbons in June 2001.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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 this decision.