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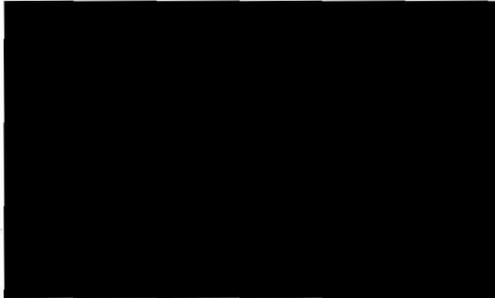
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IN RE:

Petitioner:



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.

*Mari Johnson*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 the Philippines<sup>1</sup> 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. The petitioner filed the instant Form I-360 petition on January 7, 2005. The director denied the petition on November 15, 2005, based upon the determination that the petitioner did not have a qualifying relationship as the spouse of a United States citizen and was not eligible for classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a United States citizen. The petitioner, through counsel, files a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 [Secretary of Homeland Security] 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;

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<sup>1</sup> The petitioner indicated that she also resided in Qatar from June 1984 to April 1987, working for

(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 petitioner married [REDACTED] in the Philippines on August 7, 1978. The petitioner stated that she had married United States citizen [REDACTED] in a religious service on June 13, 1987. She submitted a marriage certificate showing that she married [REDACTED] in a civil ceremony on June 29, 1987 in Colorado. Mr. [REDACTED] filed a Form I-130 on the petitioner's behalf in 1987 in which he indicated that the petitioner had no prior marriages. On November 3, 1987, the district director denied the petition, finding that although Mr. [REDACTED] claimed on the Form I-130 that his wife (the petitioner) had never been previously married, she had indicated on her nonimmigrant visa application dated October 25, 1986 that she was married and had no relatives in the United States; therefore, her marriage to Mr. [REDACTED] was invalid. The district director gave the petitioner until February 15, 1988 to voluntarily depart the United States. She left the United States on February 15, 1988 and returned to the Philippines. The petitioner entered the United States on July 22, 1989, using a fraudulent Philippine passport.<sup>2</sup> Mr. [REDACTED] filed another Form I-130 petition on July 25, 1996. The petitioner filed a Form I-485 application concurrently with the petition. On the application, the petitioner indicated that her first husband, [REDACTED] died on August 9, 1990 and that she married Mr. [REDACTED] on July 2, 1996 in California. On September 18, 1997, the petitioner filed a Form I-601 application for a waiver of grounds of exclusion.<sup>3</sup>

The issue to be addressed in this proceeding is whether the petitioner established that she had a qualifying relationship as of the date of filing the instant petition and whether she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on that relationship with a United States citizen.

As evidence of her qualifying relationship with a United States citizen, the petitioner submitted a copy of Mr. [REDACTED] birth certificate, which establishes that he is a United States citizen. The petitioner submitted marriage certificates showing she wed Mr. [REDACTED] on June 29, 1987 and again on July 2, 1996. As evidence that her first marriage was legally terminated, the petitioner submitted to Citizenship and Immigration Services (CIS) a copy of the death certificate for her first husband, [REDACTED]. The death certificate indicates that he died in the Philippines on August 9, 1990. However, according to the death certificate, Mr. [REDACTED] surviving spouse was [REDACTED], not the petitioner. This serious discrepancy calls into question the validity of the death certificate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel suggests that the death certificate is legitimate even though it "incorrectly indicates" the name of [REDACTED] girlfriend; however, he submits no evidence on appeal to corroborate the claim that it contains a mere typographical error or to establish that the individual listed on the death certificate is in fact the petitioner's husband and not another individual married to [REDACTED]. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988);

<sup>2</sup> The fraudulent passport number is [REDACTED] under the name [REDACTED]

<sup>3</sup> The petitioner is inadmissible under section 212(a)(6)(C) of the Act.

*Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director determined, and the AAO concurs, that the petitioner failed to establish that she has or had a qualifying relationship with a United States citizen because she failed to establish that her first marriage was legally terminated prior to her subsequent marriages to Mr. [REDACTED]. The legality of her marriage to the United States citizen is in question; therefore, the petitioner failed to establish she has a qualifying relationship and is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on that relationship.

Accordingly, we concur with the finding of the director that the petitioner is ineligible for classification because she does not have a qualifying relationship as the spouse, or intended spouse of a United States citizen.

However, although the petitioner has failed to overcome her statutory ineligibility, we find the case must be remanded to the director for further consideration. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) requires the director to issue a Notice of Intent to Deny (NOID) in all cases where "the preliminary decision on a properly filed self-petition is adverse to the self-petitioner . . . ." The regulation does not distinguish between cases where there is statutory ineligibility and those cases in which the evidence simply appears to be deficient. Accordingly, the case must be remanded to the director for issuance of an NOID pursuant to the regulation and a new decision.

Despite the fact that the director's decision rested on the issues discussed above, we find one additional issues that should be addressed on remand. On remand, the director should also consider whether the petitioner established that she entered into the marriage in good faith.

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.