

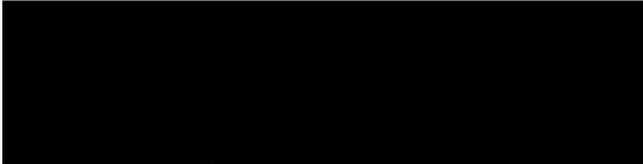
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 24 2006
EAC 02 098 51478

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:

SELF-REPRESENTED

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, 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 September 17, 2002, 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 his United States citizen spouse.

On June 8, 2005, 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 an abusive U.S. citizen at the time her petition was filed. The record shows that the petitioner was not divorced from her first husband, [REDACTED] at the time she married her abusive U.S. citizen husband, [REDACTED]. The director notified the petitioner that she had sixty days to respond to the NOIR. The petitioner did not respond. Accordingly, the director revoked the approval of the petition on November 16, 2005.

The petitioner timely appealed. On appeal, the petitioner explains why she did not submit evidence of her divorce from [REDACTED].

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 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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied . . . by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

The petition was filed on January 22, 2002. On her Form I-360, the petitioner stated that she married [REDACTED] on March 20, 1984. Yet the petitioner submitted a marriage certificate that shows that the petitioner and [REDACTED] were actually married on April 2, 1998 in Florida. The certificate states that neither the petitioner nor [REDACTED] had been previously married.

However, the petitioner's administrative file contains a copy of the Hillsborough County, Florida Circuit Court judgment dissolving the petitioner's prior marriage to [REDACTED] which is dated June 2, 1999. The record thus shows that the petitioner was not divorced from [REDACTED] at the time of her marriage to [REDACTED] rendering her marriage [REDACTED] invalid. On appeal, the petitioner submits no evidence that under Florida law, her marriage to [REDACTED] became valid on the date of her divorce from [REDACTED].

On appeal, the petitioner states:

I did not have with me the evidence of my first divorce with my first husband [REDACTED] that is also why I did not submit this evidence. I could not go to Venezuela to get it, because if I go, I could not return to U.S.A. Furthermore, I could not hire [sic] any attorney in Venezuela, because most offices of court houses and public offices have been changed and nobody wants to take my case.

It is not clear from the petitioner's statements if she was previously divorced from [REDACTED] in Venezuela before she married [REDACTED] in the United States, but could not obtain documentation of the divorce; or if she was unable to obtain a divorce from [REDACTED] in Venezuela and so sought dissolution of their marriage in the United States. The petitioner has submitted no further evidence of the validity of her marriage to [REDACTED] on appeal.

The petitioner has not established that she was the spouse of an abusive United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act. She is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her self-petition must be denied.

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.