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FILE:

[Redacted]
EAC 04 200 53389

Office: VERMONT SERVICE CENTER

Date:

MAR 27 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:

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, Director
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Sierra Leone 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 last entered the United States on March 29, 1996 as a B-2 nonimmigrant visitor. The petitioner filed her Form I-360 on June 21, 2004.

The petitioner submitted the following evidence: the petitioner's statement, a partial copy of her passport, a petition and preliminary order from abuse vis-à-vis the petitioner's spouse, letters verifying that the petitioner and her children obtained shelter for victims of domestic abuse, letters from church officials, copies of the petitioner's children's birth certificates, the petitioner's certificate of ordination, correspondence from the petitioner's son's school about a multidisciplinary evaluation, the petitioner's marriage certificate and divorce decree.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on July 13, 2004 and again on February 9, 2005, the director issued notices requesting the petitioner to submit evidence to establish her husband's immigration status, evidence that her former spouse subjected her or their children to battery or extreme cruelty, and that she is a person of good moral character.

On August 12, 2005, the director denied the petition because the record failed to establish that the petitioner has a qualifying relationship as the spouse, or former spouse of a citizen or lawful permanent resident of the United States; and that she is eligible for immigrant classification based on that relationship.

On appeal, the petitioner requested a 30-day extension to submit a written statement in support of her appeal. More than six months have lapsed since the petitioner submitted the notice of appeal and nothing more has been submitted to the record.

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 first issue to be addressed in this proceeding is whether the petitioner established that she was the spouse of a citizen or lawful permanent resident of the United States either at the time of or within two years prior to the filing of the petition.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, because according to the evidence on the record, the petitioner had divorced her spouse more than two years prior to the filing of the petition. The director determined and the AAO concurs that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing a Form I-360 petition.

The evidence clearly establishes that the petitioner's marriage to her abusive spouse was terminated more than two years prior to the filing of the instant petition.

While section 204(a)(1) of the Act allows a former spouse to file a self-petition for up to two years following the termination of a bona fide marriage if there was a connection between the termination of marriage and abuse, there is no provision that would allow an alien to file if the marriage terminated beyond the 2-year period.

She is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, and her self-petition must be denied.

The next issue to be addressed in this proceeding is whether the petitioner established that she has been married to a citizen or lawful permanent resident of the United States. In a request for additional evidence, the director listed the types of evidence that would establish the petitioner's spouse's immigration status. The petitioner failed to submit additional evidence on this point in response to the request for additional evidence.

We concur with the director's determination that the petitioner failed to establish her eligibility for the classification sought; therefore, 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.

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.