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U.S. Citizenship
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FILE: [REDACTED]
EAC 06 081 52829

Office: VERMONT SERVICE CENTER

Date: NOV 15 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not respond to a request for further evidence and the evidence submitted did not establish that the petitioner's former husband was a lawful permanent resident of the United States.

On appeal, counsel submits evidence of her attempts to obtain further documentation and requests additional time to obtain information regarding the immigration status of the petitioner's former husband.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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 . . . the self-petitioner . . .

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Russia who was paroled into the United States on June 8, 2003. On August 1, 1992, the petitioner married O-Z-¹ in Russia. The former couple was divorced in Russia on November 19, 2004. The petitioner filed this Form I-360 on January 23, 2006. On February 28, 2006, the director denied the petition because the record did not establish that the petitioner's former husband was a lawful permanent resident of the United States and that she was eligible for preference immigrant classification based on their former relationship. The petitioner, through counsel, timely appealed.

On appeal, counsel requests that the petitioner's case be reopened and additional time be granted for her to obtain proof of her former husband's immigration status. We concur with the director's determination. Citizenship and Immigration Services (CIS) records indicate that the petitioner's former husband was denied adjustment of status to lawful permanent residency and has no other pending applications or petitions for lawful permanent resident status. Accordingly, no purpose would be served by granting counsel's request for additional time to document the immigration status of the petitioner's former husband. Beyond the director's decision, the record also fails to establish the petitioner's good moral character. Nonetheless, the petition will be remanded because the director

¹ Name withheld to protect individual's identity.

denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Qualifying Relationship and Eligibility for Preference Immigrant Classification

On the Form I-360, the petitioner states that her former husband is a lawful permanent resident of the United States. However, CIS records show that the Form I-485, application for adjustment to permanent resident status, of the petitioner's former husband was denied on October 13, 2006. CIS records also do not indicate that the petitioner's former husband obtained lawful permanent residency by any other means. Accordingly, the record fails to establish that the petitioner had a qualifying relationship with a U.S. lawful permanent resident, as required by section 204(a)(1)(B)(ii)(II)(aa) of the Act.

The record also fails to establish that the petitioner was eligible for preference immigrant classification based on her relationship with her former husband, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for preference immigrant classification under section 203(a)(2)(A) of the Act, as the spouse of an alien lawfully admitted for permanent residence, based on his or her relationship to the abusive spouse. Because the petitioner's former husband is not a lawful permanent resident, she is ineligible for preference immigrant classification based on their former relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

Good Moral Character

Beyond the director's decision, the present record also fails to establish the petitioner's good moral character. The petitioner submitted a letter from Global Investigative Services, which states that no criminal history record was found for the petitioner in an unidentified district court in Maryland. This letter is not a local police clearance or a state-issued criminal background check and the petitioner did not explain that such clearances or checks were unavailable to her, as specified in the regulation at 8 C.F.R. § 204.2(c)(2)(v). Accordingly, the present record fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner failed to demonstrate her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, 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.