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20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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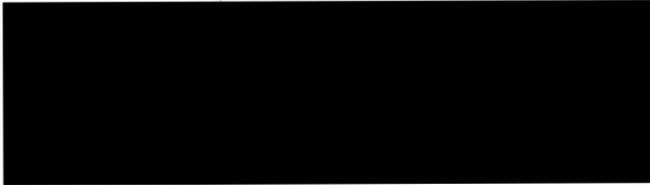


FILE: [REDACTED] EAC 06 014 50535

Office: VERMONT SERVICE CENTER

Date: NOV 22 2006

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:

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 Director, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a native and citizen of the Philippines who seeks 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 the abused spouse of a United States citizen.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with a United States citizen.

The petitioner timely appealed.

Section 204(a)(1)(A)(iii) of the Act states:

(I) An alien who is described in subclause (II) may file a petition with the [Secretary of Homeland Security] under this clause for classification of the alien (and any child of the alien) 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.

(II) For purposes of subclause (I), an alien described in this subclause is an alien –

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and –

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

Section 204(a)(1)(J) of the Act prescribes that when acting on self-petitions for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the Secretary of Homeland Security:

[s]hall 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

\* \* \*

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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.

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(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

In this case, the record provides the following pertinent facts and procedural history. The petitioner entered the United States on June 8, 2000 as the K-1 nonimmigrant fiancée of [REDACTED] a U.S. citizen. The petitioner did not marry [REDACTED]. On April 30, 2001, the petitioner married T-N-,\* also a U.S. citizen, in Kennewick, Washington. The petitioner gave birth to their daughter on January 24, 2002. However, T-N-'s prior marriage was not dissolved until April 11, 2002. The petitioner and T-N- married again on August 18, 2004 in Kennewick, Washington. On June 10, 2005, Citizenship and Immigration Services (CIS) approved the Form I-130 petition for alien relative filed by T-N- on the petitioner's behalf. On August 8, 2005, CIS denied the petitioner's Form I-485 application to adjust status pursuant to section 245(d) of the Act, which allows the adjustment of status of aliens admitted as K-1 nonimmigrant fiancées based only upon their marriage to their original fiancés. On September 29, 2005, the petitioner filed this Form I-360. On December 29, 2005, the director denied the petition because the record did not demonstrate that the petitioner had a qualifying relationship with a U.S. citizen. The director did not issue a Notice of Intent to Deny (NOID) before denying the petition.

On her Form I-290B, Notice of Appeal, the petitioner states, "I have a qualifying marriage that allows me to adjust my status." The petitioner dated the appeal January 12, 2006 and indicated that she would send a brief and/or evidence to the AAO within 30 days. To date, the AAO has received nothing

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\* Name withheld to protect individual's identity.

further from the petitioner. Consequently, the case will be adjudicated based on the record before the director.

We concur with the director's determination that the petitioner did not establish a qualifying spousal relationship with [REDACTED] her original fiancé, because they were never married. Aliens who have been abused by their U.S. citizen fiancés are not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Beyond the director's decision, the record also fails to establish the requisite battery or extreme cruelty, good faith marriage, and joint residence. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which requires CIS to issue a NOID before a petition is denied.

#### *Qualifying Relationship and Eligibility for Immediate Relative Classification*

The petitioner<sup>1</sup> claimed that she was eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she had good faith intentions to marry her U.S. citizen former fiancé and was subjected to extreme cruelty by her intended spouse during the relationship intended to be a marriage. The petitioner misreads the statute. An alien who has not married a U.S. citizen is only eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien believed that he or she had married a U.S. citizen with whom a marriage ceremony was actually performed, but whose marriage was not legitimate solely because of the U.S. citizen's bigamy. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB). The petitioner submitted no evidence that a marriage ceremony was actually performed between her and her former fiancé. The record is also devoid of any evidence that the petitioner's former fiancé committed bigamy. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with her former fiancé pursuant to section 204(a)(1)(A)(iii)(II) of the Act, or that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### *Battery or Extreme Cruelty*

Beyond the director's decision, the record fails to establish battery or extreme cruelty pursuant to section 204(a)(1)(A)(iii)(I)(bb) of the Act because that provision only applies to individuals who have been battered or subjected to extreme cruelty by a U.S. citizen with whom they had a

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<sup>1</sup> The petition was prepared by an immigration service provider. Although the petition is accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, the immigration service provider has not established that she is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

qualifying spousal relationship. As discussed in the preceding section, the petitioner did not have a qualifying relationship with her former fiancé because they were never married.

We note that in his September 26, 2005 letter [REDACTED], the petitioner's employer, states:

[The petitioner] is also in another domestic violence relationship currently, I have seen the abuse first hand as have many other witnesses (including physical abuse), she is afraid of leaving this current relationship because of the threat of losing her residency status (and afraid to report the abuse to the police because of her status).

[REDACTED] does not explicitly identify the petitioner's current spouse as her abuser and apart from his letter, the record contains no evidence of the petitioner or her child having been battered or subjected to extreme cruelty by her current spouse. If the petitioner has been abused by her current husband, she may be eligible to file a new Form I-360 petition based on their marital relationship.

#### *Good Faith Marriage*

Beyond the director's decision, the record fails to establish the petitioner's good faith entry into marriage with M-C-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act because the evidence shows that a marriage ceremony was never conducted between the petitioner and [REDACTED].

#### *Joint Residence*

Beyond the director's decision, the record fails to establish the joint residence required by section 204(a)(1)(A)(iii)(II)(dd) of the Act because this provision only applies to individuals who have or had a qualifying spousal relationship with a U.S. citizen. The record shows that the petitioner did not have a qualifying relationship with her former fiancé because they were never married.

The petitioner has not established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on her relationship with her former fiancé, [REDACTED]-. However, the case will be remanded for compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which requires CIS to provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.