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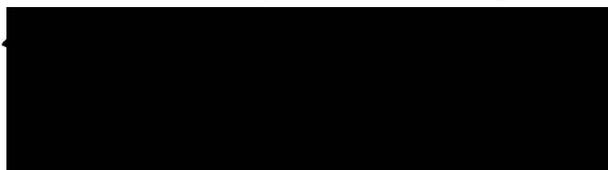
U.S. Department of Homeland Security
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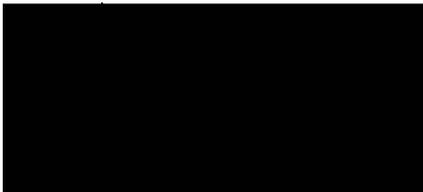


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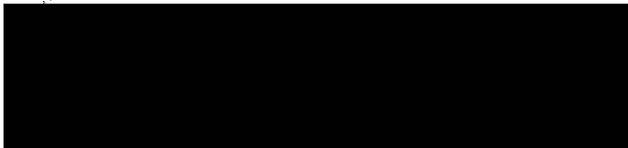
Date: OCT 06 2006

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:



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 R. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (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 The decision of the director will be withdrawn and the petition will be remanded for further action.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)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the record did not establish that the petitioner entered into marriage with her husband in good faith.

The petitioner, through counsel, timely appealed.

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 or a child of 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of

persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of Jamaica who entered the United States on August 5, 2002 as a B-1 nonimmigrant visitor. The petitioner married F-V-¹ on August 11, 2003 in Washington Parish, Louisiana. The petitioner filed this Form I-360 on April 4, 2005. On July 18, 2005, the director issued a Request for Evidence (RFE) of evidence of the petitioner's spouse's United States citizenship, the registration of the petitioner's marriage, the petitioner's residence with her spouse, and her good faith entry into marriage with her husband. On September 16, 2005, the petitioner, through counsel, timely responded with additional evidence and requested an additional 60 days in which to respond to the director's request. The director granted the petitioner's request and the petitioner submitted a certified copy of the petitioner's marriage certificate on November 23, 2005. On January 24, 2006, the director denied the petition and counsel timely filed an appeal.

On the Form I-290B, counsel argues that the director failed to discuss all relevant evidence when making the determination that the petitioner failed to establish that she entered into the marriage in good faith. Although counsel initially indicated that additional evidence would be submitted, her most recent submission indicates that no further would be forthcoming. Upon review of the record, although we concur with the director's determination, the petition will be remanded because the director 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).

Good Faith Entry into Marriage

In her personal statement submitted with the Form I-360, the petitioner explains:

I went to live in Bogalusa, Louisiana because my brother and his girlfriend lived there. My brother got a job out of state but I continued to stay in house with his girlfriend. Soon, I made friends in the neighborhood. One of my friends was [REDACTED] introduced me to my husband [F-V-]. [F-V-] and [REDACTED] husband worked together in a correctional facility. Initially, [F-V-] was very nice to me. I thought we would be happy together. He told me that his ex-wife was Jamaican and that he loved our food and culture. We even planned to take a trip to Jamaica together. Eventually, he proposed to me and we married on August 11, 2003. Everything changed after I became his wife.

The petitioner does not provide any specific details regarding her relationship with her spouse prior to their marriage, such as how long they dated or any of their shared experiences. The petitioner submitted copies of several undated, uncaptioned photographs of what appear to be the petitioner and her spouse on their wedding day. While these photographs document that event, they do not independently establish the petitioner's good faith entry into marriage with her husband. The petitioner also submitted two statements from friends who attest to the petitioner's spouse's maltreatment of the petitioner, but who fail to provide any information about the petitioner's good faith marriage. For instance, although [REDACTED] explains how she introduced the petitioner to her spouse and that they "grew close and decided to become a couple," as it relates to the petitioner's marriage, [REDACTED] states only that after "dating for a while [F-V-] proposed to [the petitioner] and she accepted." Neither affiant provides any indication as to the petitioner's feelings or intent at the time of her marriage which would indicate that she intended to share a life with her spouse. The affidavit from the petitioner's brother [REDACTED] indicates that he was not in the United States when the petitioner met her

¹ Name withheld to protect individual's identity.

spouse and provides no information regarding the petitioner's relationship with her spouse prior to their marriage or any other details to establish that the petitioner's intent in marrying her spouse.

In response to the director's RFE, the petitioner submitted a certified copy of her marriage certificate, medical records, and two letters from the petitioner's friends. Similar to the affidavits initially submitted, the letters submitted in response to the RFE discuss the petitioner's spouse's treatment of the petitioner, but provide no details regarding the petitioner's good faith marriage. In fact, the letters give no indication that either individual knew the petitioner or her spouse prior to their marriage.

On appeal, counsel argues that in his decision, the director "only noted photos of the marriage," while failing to consider "credible relevant evidence" such as the affidavits and letters from the petitioner's friends and brother and the petitioner's emergency room records. **We are not persuaded by this argument.** Although we acknowledge that the director did not discuss the affidavits and letters, as discussed above, such evidence provided no support to the claim that the petitioner entered into the marriage in good faith. None of the statements contained any information which would establish that the petitioner intended to share a life with her spouse. As it relates to counsel's reference to the emergency room records, we find no correlation between the medical records and the petitioner's claim of a good faith marriage. The present record thus fails to establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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 Citizenship and Immigration Services (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.

In addition to the single ground discussed above, we find two additional issues that must also be addressed on remand.

First, although the director found that the record was sufficient to establish the petitioner's spouse's United States citizenship, we withdraw that finding. The sole piece of evidence submitted by the petitioner to establish her spouse's citizenship is a copy of the marriage certificate which indicates that her spouse was born in Louisiana. **Such evidence is not considered primary evidence of his U.S. citizenship.** The fact that the petitioner's spouse provided such information in order to receive a marriage license is not sufficient as the record does not show that Louisiana requires proof of United States citizenship and independent verification of such citizenship in order to obtain a marriage license. The petitioner has also failed to demonstrate that the certificate does not exist or cannot be obtained and to submit secondary evidence, such as church or school records. Finally, in the alternative, the petitioner has failed to demonstrate the unavailability of both the required document and relevant secondary evidence, and to submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances.²

² See the regulation at 8 C.F.R. § 103.2(b)(2) for requirements for the submission of secondary evidence and affidavits.

Second, we find that the record does not contain sufficient evidence to establish the petitioner's good moral character. The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. In this instance, the petitioner's affidavit contains no statement regarding her good moral character. More importantly, although the petitioner currently resides in Georgia and has submitted a police clearance from Georgia, the record does not contain a police clearance from Louisiana where the petitioner resided until at least the end of 2003. Therefore, these two additional issues must be addressed on remand. 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.