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U.S. Citizenship  
and Immigration  
Services



04

FILE:



EAC 04 224 52787

Office: VERMONT SERVICE CENTER

Date: 001 2

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.

A handwritten signature in black ink, appearing to be "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

PUBLIC COPY

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Canada 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 director denied the petition without the issuance of a Notice of Intent to Deny in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii), noting the petitioner's failure to respond to a request for evidence and finding that the petitioner had failed to establish her eligibility for classification.

The petitioner submitted a timely appeal.

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 petitioner in this case is a native and citizen of Canada who married N-E-<sup>1</sup>, a U.S. citizen, in Candor, New York on August 24, 2001. On October 16, 2001, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On January 9, 2002, the petitioner filed a Form I-485, Application to Adjust Status.<sup>2</sup> The petitioner filed this Form I-360 on July 29, 2004. On the Form I-360, the petitioner indicated that she had been previously married and that she was divorced from her citizen spouse. The director subsequently issued a Request for Evidence (RFE) for further evidence regarding the legal termination of the petitioner's prior marriage to A-H-<sup>3</sup>, as well as her marriage to her citizen spouse.<sup>4</sup> The

<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> The Form I-130 and the Form I-485 were denied on May 9, 2006.

<sup>3</sup> Name withheld to protect individual's identity.

petitioner failed to respond to the director's request for evidence and the director denied the petition on July 28, 2005, finding that the petitioner failed to establish her eligibility.

On appeal, the petitioner submits copies of the certificates of dissolution of marriage for both of her marriages. While we note that in most instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the notice of intent to deny (NOID) required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii), we have reviewed the petitioner's appellate submission in order to determine whether the submission overcomes the director's stated grounds for denial. Upon review, we find the petitioner's appellate submission overcomes the director's grounds for denial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden.

**ORDER:** The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.

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<sup>4</sup> The director also indicated that if the petitioner intended to include her biological children as derivative beneficiaries on her petition, the petitioner should also submit copies of their birth certificates.