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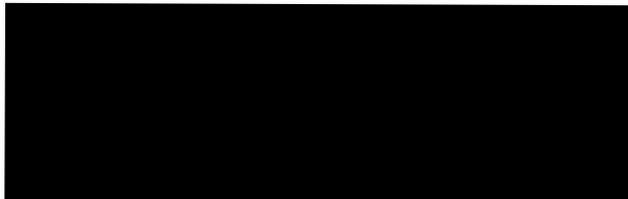
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 08 2006  
EAC 05 211 52312

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Australia who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.<sup>1</sup>

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith.

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.

\* \* \*

(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

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<sup>1</sup> An attorney submitted evidence to CIS on the petitioner's behalf; however, CIS cannot recognize him as an authorized representative in the absence of a properly executed G-28 form. 8 C.F.R. § 292.4.

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. . . . 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.

\* \* \*

(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.

On the Form I-360, the petitioner indicated that she last entered the United States in March 2005. She did not explain the manner of her entry. The record shows that the petitioner married Brian Motter, a United States citizen, on April 30, 2005 in Ohio.

On July 21, 2005, the petitioner filed her Form I-360. On July 28, 2005, the director issued a notice informing the petitioner that the evidence submitted with her Form I-360 was insufficient to establish her eligibility and requested evidence of her good moral character and that she entered into the marriage in good faith. The petitioner responded to the request on September 26, 2005. On September 28, 2005, the director issued another notice requesting evidence to establish the citizenship of her spouse; documentation of the legal termination of the petitioner's prior marriage(s); evidence that she had resided with her spouse; evidence that she entered into the marriage in good faith; and evidence of her good moral character. The petitioner responded to the director's request in November 2005.

#### *Good Faith Marriage*

The first issue to be addressed is whether the petitioner established that she entered into the marriage in good faith as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(H).

As evidence that she entered into the marriage in good faith, the petitioner submitted the following:

- The petitioner's statements dated March 14, 2006 and October 11, 2005.
- Three photographs of her wedding.

- Two letters written by the Reverend [REDACTED] Waynesfield Baptist Church.
- A lease dated April 21, 2005 signed by the petitioner and her spouse.
- A marriage certificate.

In her statement submitted to Citizenship and Immigration Services (CIS) in response to the director's request for additional evidence, the petitioner stated that she had known her husband for four years prior to their marriage and that when she came to the United States in 2005, she did not intend to marry him. She also said that when she met up with him in the United States in 2005, she stayed with her husband's mother, where she was able to spend a lot of time with her prospective spouse. She said, "after being with him, I knew, well I thought I knew it [marriage] was the right thing to do." In the statement provided on appeal, the petitioner said that she met her husband in New York City in 2001 where they dated for three months. She said that they communicated frequently after she returned to Australia and that she returned to the United States in March 2005. They wed in April 2005. She failed to state how she met her husband. She failed to describe their courtship in any detail. She merely states she thought marriage was the right thing to do.

The remaining evidence, which consists of the petitioner's marriage certificate and photographs, are also insufficient to establish that the petitioner entered into her marriage in good faith. While the marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith. Similarly, while the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage.

Some of her testimony is inconsistent. She wrote that when she came to the United States [in March 2005], she stayed with her prospective spouse's mother. According to information provided on her Form I-360, she began residing with her prospective spouse in March 2005. She indicated in her statement dated March 14, 2006 that during their three and one-half years of international correspondence, she and her prospective spouse discussed their future plans of marriage. In her statement dated October 11, 2005, she said that when she came to the United States in 2005, she was not intending to marry him. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a letter, Reverend [REDACTED], of the Waynesfield Baptist Church, wrote that he met with the petitioner and [REDACTED] in preparation for their wedding and he thought that they had genuine feelings for each other. In a subsequent letter, the Reverend indicated that he met with the petitioner and [REDACTED] on four occasions. He further wrote that he has known [REDACTED] for 20 years and felt that his love for the petitioner was honest and that "he seemed to feel the same commitment from her." The issue of good faith marriage relates to the petitioner's intent at the inception of the marriage rather than to the petitioner's spouse's intent. The Reverend's letters lack an explanation of the basis for his opinion or conclusion that he felt that the petitioner and her then prospective spouse

had genuine feelings for one another.

Further, as noted by the director, the record is absent evidence of the commingling of funds and assets, or financial accounts or documentation, which demonstrate a good faith marriage. The petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(aa) of the Act; hence, the petition may not be approved.

*Qualifying Relationship*

The petitioner must establish that she has a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States. Section 204(a)(1)(A)(iii) of the Act. The petitioner submitted a copy of her marriage certificate and a copy of one divorce decree. However, the marriage certificate indicates that the petitioner had two prior marriages. Although one affiant, a member of the petitioner's Women of Word Sunday School class, advises that the petitioner told her that her spouse was killed in an automobile accident, the petitioner did not make this claim, nor is there any evidence relating to the termination of this marriage. She failed to establish that both of her prior marriages were legally terminated prior to her April 2005 marriage. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

The case must be remanded for issuance of a 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 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.