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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B9

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FILE: [REDACTED]
EAC 05 219 51721

Office: VERMONT SERVICE CENTER

Date: SEP 11 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Alien Spouse whose Children are Abused by the U.S. Citizen Parent 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 that reads "Mari Olsson".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.¹

The director denied the petition, finding that the petitioner failed to 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. The director further denied the petition, finding that the petitioner failed to establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on a qualifying relationship with a citizen of the United States; or section 203(a)(2)(A) of the Act, based on a qualifying relationship with a lawful permanent resident of the United States.

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 petition for immigrant classification of the alien or the alien's child 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 alien's child 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 regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;

¹ The petitioner did not indicate whether her husband was a lawful permanent resident or citizen of the United States.

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

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:

(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. . . .

The evidence in the record indicates that the petitioner wed A—K—² in Pakistan on September 18, 1993, and divorced him on January 8, 2005. The petitioner is a native and citizen of Pakistan who last entered the United States on May 8, 2005 as a B-2 nonimmigrant visitor. On August 2, 2005, the petitioner filed this Form I-360.

On August 9, 2005, the director requested additional evidence, finding that the petitioner had failed to establish a prima facie case for classification under section 204(a)(1)(A)(iii) of the Act. The petitioner submitted further evidence on September 4, 2005. Finding the evidence insufficient, on October 31, 2005, the director requested additional evidence. The petitioner submitted additional evidence on December 23, 2005. On January 25, 2006, the director denied the petition because the petitioner failed to establish that she had a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States and that she is eligible for special immigrant

² The petitioner's spouse's name is abbreviated for confidentiality reasons.

classification based upon that relationship. Specifically, the petitioner had not established that her former spouse was a citizen or lawful permanent resident of the United States.

On appeal, the petitioner asserts that it is impossible to get the evidence requested. She states that her husband abandoned her and surreptitiously left the United States. We concur with the director's conclusion and find that the petitioner's assertions and the evidence submitted on appeal do not overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). 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 his case.

On remand, the director should also consider whether the petitioner demonstrated a connection between the legal termination of the marriage and abuse perpetrated by the petitioner's spouse.

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.