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U.S. Citizenship
and Immigration
Services

B9



FILE: [Redacted] EAC 05 202 53554

Office: VERMONT SERVICE CENTER

Date: SEP 27 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 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 Vietnam who entered the United States on March 24, 2003 as the nonimmigrant fiancée of S-N-¹, a U.S. citizen. The petitioner married S-N- on June 12, 2003 in San Jose, California. The petitioner filed this Form I-360 on July 11, 2005. On September 26, 2005, the director issued a Request for Evidence (RFE) of the petitioner's good moral character and her good faith entry into marriage with her husband. The petitioner, through counsel, timely responded. On January 9, 2006, the director denied the petition and counsel timely filed an appeal.

On the Form I-290B, counsel stated the reason for appeal as, "Supply additional information." Yet counsel did not submit additional information or evidence with the Form I-290B and did not indicate that he would submit a brief or further evidence at a later time. 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 undated statement submitted with the Form I-360, the petitioner explains:

When I met my future husband in Vietnam, he was sweet and loving. He wanted me to come to the United States and have a family with him. After he proposed, and I accepted, our engagement party was scheduled for August 17, 2001. Our engagement ceremony was witnessed by my family and friends, including my parents and my grand parents [sic]. My husband brought his older brother, his wife, younger brother and his uncle to attend our ceremony. I arrived in the United States on March 24, 2003 and we were married on June 12, 2003. After we were married I discovered that we were to live with his mother and father.

The petitioner does not further discuss how she met her husband, their courtship, wedding or any of their shared experiences, apart from her husband's abuse. The petitioner submitted photographs of her and her husband at their engagement ceremony in Vietnam. While these photographs document that event, they do not independently establish the petitioner's good faith entry into marriage with her husband.

In response to the director's RFE, the petitioner submitted evidence of her good moral character, but no evidence of her good faith marriage. In her November 14, 2005 statement, the petitioner explains that

¹ Name withheld to protect individual's identity.

she only resided with her husband for approximately five months before she escaped from his home. While the short duration of the former couple's joint residence may explain the petitioner's lack of joint documentation with her husband, the petitioner has not discussed in any probative detail how she met her husband, their courtship, wedding and any of their shared experiences, apart from his abuse. The petitioner submitted two statements from friends who attest to her good character and her husband's maltreatment, but the friends provide no other information about the petitioner's 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.

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.