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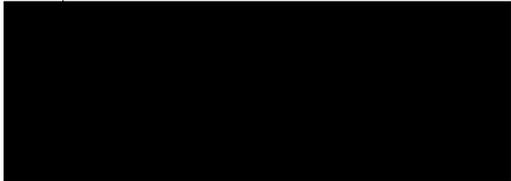
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: [REDACTED]  
EAC 06 195 52386

Office: VERMONT SERVICE CENTER

Date: DEC 28 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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.

  
for 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 her United States citizen spouse.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with her former husband.

The petitioner, through counsel, 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 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The petitioner in this case is a native and citizen of Jamaica who claims to have entered the United States in June 1988 as a "student/visitor." On August 12, 1997, the petitioner married H-D-<sup>1</sup>, a U.S. citizen, in New York. On May 30, 2002, their marriage was dissolved by order of the Supreme Court of Queens County, New York.<sup>2</sup> The petitioner filed this Form I-360 on June 5, 2006. The director denied the petition on December 18, 2006, finding that the petitioner did not establish that she had a qualifying relationship with her former husband due to the dissolution of their marriage over two years before the petition was filed.

On appeal, the petitioner does not contest the fact that she was divorced from her citizen spouse for more than two years at the time of filing but states that she was unaware of this requirement "even after seeking legal assistance in several instances." The record does not indicate that the petitioner has ever been represented by an

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

<sup>2</sup> Index No. 99/27261.

attorney in this proceeding or during the pendency of the Form I-130 that was filed in her behalf by her former spouse. Accordingly, we find no reason to infer that the petitioner is claiming to have received ineffective assistance of counsel.

The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner in this case was divorced from her spouse for more than two years at the time of filing the petition. Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with her former husband.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, that she resided with her spouse, as required by 204(a)(1)(A)(iii)(II)(dd), and that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

However, although the petitioner's appeal does not overcome the director's stated ground for denial and we have found additional issues that preclude approval of the petition, we find the case must be remanded to the director for further consideration as the director denied the petition without first issuing a Notice of Intent to Deny (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.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.