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U.S. Citizenship
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JAN 04 2007

FILE:

EAC 05 229 50071

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a faint, illegible stamp.

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 appeal will be dismissed.

The petitioner seeks classification as an 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 petitioner did not establish that she had a qualifying relationship with her former husband.

On appeal, the petitioner submits a one-paragraph letter.

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 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 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 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. 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 . . . the self-petitioner

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Argentina who entered the United States on July 28, 2000 as a nonimmigrant visitor (B-2). On February 14, 2003, the petitioner married R-G-¹, a U.S. citizen, in Indiana. Their marriage was dissolved on August 23, 2004. On August 15, 2005, the petitioner filed this Form I-360 self-petition. On August 24 and October 21, 2005, the director issued Requests for Evidence (RFE) of, *inter alia*, the petitioner's qualifying relationship with her former husband and her entry into their marriage in good faith. The petitioner responded with additional evidence on November 25, 2005. On January 9, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of a qualifying relationship. The petitioner did not respond to the NOID and the director denied the petition on June 13, 2006.

On appeal, the petitioner states that she has only been married once, to her former husband, R-G-. The petitioner provides no explanation for her failure to provide this information in response to the RFEs and the NOID. The petitioner's statements do not overcome the ground for denial. Beyond the

¹ Name withheld to protect individual's identity.

director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with R-G- and that she entered into their marriage in good faith.

Qualifying Relationship

On the Form I-360, the petitioner stated that she had been married two times. Accordingly, in the October 21, 2005 RFE and the NOID, the director requested evidence of the legal termination of the petitioner's prior marriage to establish the validity of her marriage to R-G- pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(ii). The petitioner submitted no documentation or testimony in response to this specific request. On appeal, the petitioner states: "I was never married to the father of my three kids, I only lived with him for 13 years. My one and only marriage was to [R-G-]." The petitioner does not explain why she nonetheless stated that she had been married twice on the Form I-360. The petitioner also fails to provide any explanation of her failure to respond to the director's October 21, 2005 RFE and NOID on this issue. Although the petitioner indicated that she was never married before on her application for a license to marry R-G-, this document and the petitioner's brief statement on appeal are insufficient to resolve the discrepancy between her current assertion that she has only been married to R-G- and her statement on the Form I-360 that she has been married two times. Accordingly, the petitioner has not established that she had a qualifying relationship with her former husband, R-G-, as required by section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with R-G-. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As discussed in the preceding section, the petitioner has not established that she had a qualifying relationship with R-G-. Consequently, she has also failed to demonstrate that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good Faith Marriage

Beyond the director's decision, the record also fails to demonstrate that the petitioner entered into marriage with R-G- in good faith. In her undated letter, the petitioner states that she met R-G- at a job, that he began to visit her, met her children, promised to help her raise her children as if they were his own and wanted her to quit her job so that she could get an education. The petitioner states that "a few weeks later," she agreed to marry him. The petitioner provides no further details concerning how she met R-G-, their courtship and wedding. The petitioner also does not discuss the former couple's shared residence or experiences, apart from R-G-'s abuse.

The petitioner's friend, [REDACTED] states that the petitioner told her that R-G- had good intentions and wanted to be a father to her children and that "[h]e filled her with promises until she accepted to marry him [sic]." Yet Ms. [REDACTED] does not describe the petitioner's behavior during the former couple's courtship in any detail and Ms. [REDACTED] does not indicate that she has any other, relevant knowledge of the petitioner's marital relationship. Ms. [REDACTED] brief letter thus contains no probative information regarding the petitioner's allegedly good-faith entry into marriage with R-G-.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and stated in the director's October 21, 2005 RFE. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The record does not establish that the petitioner married R-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that she had a qualifying relationship with her former husband, R-G-; that she was eligible for immediate relative classification based on such a relationship; and that she entered into marriage with R-G- in good faith. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her self-petition must be denied.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.