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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]
EAC 05 248 50889

Office: VERMONT SERVICE CENTER

Date:

JAN 24 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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 immigrant 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 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 statement and additional documents.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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 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.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of the Philippines who was paroled into the United States on October 24, 2003. On December 20, 2002, the petitioner married J-C-¹, a U.S. citizen, in Washington. The former couple was divorced on August 11, 2003. On November 20, 2003, the Seattle District Office terminated action on the Form I-130, petition for alien relative, filed by J-C- on the petitioner's behalf due to J-C-'s withdrawal of the petition. On that same date, the Seattle District Office denied the petitioner's Form I-485, application to adjust status. On February 13, 2004, the petitioner was served with a Notice to Appear for removal proceedings, charging her as inadmissible under section 212(a)(7)(A) of the Act as an alien without a valid visa or other entry document. On March 31, 2004, the Seattle Immigration Court ordered the petitioner removed from the United States as charged *in absentia*.

The petitioner filed this Form I-360 on September 12, 2005. On January 27, 2006, the director denied the petition because it was filed over two years after the petitioner was divorced from J-C- and the petitioner consequently had not established the requisite qualifying relationship. The petitioner timely appealed. On appeal, the petitioner states that the person who filed her petition erroneously told her that she had until the end of August 2005 to file the petition. The petitioner states that she did not clearly understand the deadline for filing her petition and asks that we forgive her mistake.

We concur with the director's determination that the petitioner did not establish a qualifying relationship with J-C-. Beyond the director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with J-C-, that she resided with J-C-, that she entered into their marriage in good faith, and that she is a person of good moral character. Nonetheless, the case 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).

Qualifying Relationship and Eligibility for Immediate Relative Classification

The petitioner's marriage to J-C- was legally terminated on August 11, 2003. The petitioner filed her Form I-360 on September 12, 2005. The petition was not filed within the two-year statutory deadline at section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Accordingly, the petitioner has not established that she had a qualifying relationship with a U.S. citizen.

Beyond the director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with a U.S. citizen. Pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(i)(B), a self-petitioner under section 204(a)(1)(A)(iii) of the Act must also demonstrate that he or she is eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship with the abusive U.S. citizen. The present record fails to establish that the petitioner had a qualifying relationship with a U.S. citizen.

¹ Name withheld to protect individual's identity.

Consequently, the petitioner has also not established 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.

Joint Residence

Beyond the director's decision, the record fails to demonstrate that the petitioner resided with J-C-. On the Form I-360, the petitioner states that she lived with J-C- from November 2002 until April 2003 and that their last joint address was in [REDACTED]. In her August 5, 2005 declaration, the petitioner states that she moved into the Eatonville residence, the home of J-C-, in November 2002, but she provides no detailed description of their shared residence. The only document which identifies a common address for the former couple is their marriage certificate. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). 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 present record fails to establish that the petitioner resided with J-C-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

Beyond the director's decision, the record also fails to demonstrate that the petitioner entered into marriage with J-C- in good faith. In her August 5, 2005 declaration, the petitioner explains that she met J-C- after she came to the United States in August 2002 for the funeral of her first husband. The petitioner states, "After the trauma of the loss of my husband while I was Vulnerable [sic] and in recovery, I met and married [J-C-], my friends did not wish to see me sad, and they encouraged me to date [him]. We were married on December 20th, 2002." The petitioner does not further describe how she met her husband, their courtship, wedding or any of their shared experiences.

[REDACTED] states that the petitioner lived with her sister when J-C- was courting the petitioner. Ms. Drake reports that J-C- wrote love letters to the petitioner and convinced her to marry him. Ms. [REDACTED] states, "I observed the courtship, and encouraged [the petitioner] to love again, because life goes on even after the death of a husband." Yet Ms. [REDACTED] provides no detailed description of any specific incidents during the former couple's courtship that she observed and Ms. [REDACTED] provides no probative information about the petitioner's alleged good-faith in entering the marriage.

The petitioner submitted a print-out of nine short electronic mail messages dated from October 20 to 27, 2002, sent between her and J-C- that discuss when J-C- would visit the petitioner. The messages contain no terms of endearment, other expressions of romantic involvement and do not indicate that the former couple had formed a close relationship at that time, just two months prior to their marriage.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good faith entry into marriage with J-C- of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). 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 present record does not demonstrate that the petitioner entered into marriage with J-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the director's decision, the record further fails to demonstrate that the petitioner is a person of good moral character. To establish good moral character, the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires local police clearances or state-issued criminal background checks for every place the petitioner has resided for at least six months during the three years preceding the filing of the petition. The record indicates that the petitioner lived in [REDACTED] for approximately six months and then moved to [REDACTED]. The petitioner submitted a local police clearance from the Pasco, Washington Police Department, but submitted no similar clearance from Eatonville. The petitioner does not indicate that a local police clearance from Eatonville or a Washington state criminal background check is unavailable. In addition, the Pasco police clearance indicates that no criminal record was found for [REDACTED]. However, the petitioner entered the United States pursuant to a visa that was issued to "[REDACTED]". The petitioner submitted no evidence that she provided this name to the Pasco Police Department. Accordingly, the police clearance letter from [REDACTED] is insufficient to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to demonstrate that she had a qualifying relationship with J-C-, that she was eligible for immediate relative classification based on such a relationship, that she resided with J-C-, entered into their marriage in good faith and that she is a person of good moral character. Accordingly, the present record fails to establish her eligibility for immigrant classification under section 204(a)(1)(A)(iii) 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 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.