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FILE:

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EAC 05 141 52916

Office: VERMONT SERVICE CENTER

Date:

FEB 15 2008

IN RE:

Petitioner: [REDACTED]

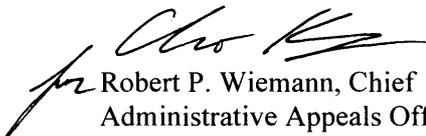
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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.

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).

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on August 5, 2005, finding that the petitioner failed to establish that she had a qualifying relationship with R-C-¹ because her previous marriage to A-E-² was not terminated until after her marriage to R-C-. In our March 30, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner had failed to establish that R-C- was a United States citizen and failed to submit evidence of the termination of her marriage to R-C-. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 6, 2006, which afforded the petitioner the opportunity to establish her qualifying relationship. The petitioner, through counsel, responded with additional evidence. After reviewing the evidence submitted, the director denied the petition on February 16, 2007, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen and certified his decision to the AAO for review. No further evidence has been submitted on certification. Accordingly, we consider the record to be complete as it now stands.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. In response to the NOID, the petitioner submitted copies of R-C-'s California birth certificate, driver license, car registration, paychecks, court documents and death certificate. In addition, the petitioner resubmitted a copy of her and R-C-'s marriage certificate. While this evidence is sufficient to establish that the R-C- was a United States citizen, the petitioner has not overcome the fact that her marriage to A-E- did not become final until after she was already married to R-C-. In addition, the petitioner failed to submit evidence of the legal termination of her marriage to R-C-. Although she submitted a copy of R-C-'s death certificate, the certificate indicates that R-C- died on February 15, 2006; nearly a year after the petitioner filed her petition. The regulation at 8 C.F.R. § 204.2(c)(2) states:

(ii) *Relationship*. A self-petition file by a spouse must 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

The petitioner indicated on the Form I-360 that, at the time of filing, she was divorced from R-C-, not widowed, but she failed to submit a copy of the termination of their divorce. As the death certificate was issued after the filing of the petition, it does not satisfactorily establish the status of the petitioner's marriage to R-C- at the time of filing. Accordingly, we concur with the director's finding that the petitioner failed to establish that she had a qualifying relationship with her citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Beyond our previous decision and the decision of the director, we additionally find that because the petitioner failed to establish a qualifying relationship, she also failed to establish that she was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on such a relationship. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

ORDER: The director's decision of February 16, 2007 is affirmed. The petition is denied.