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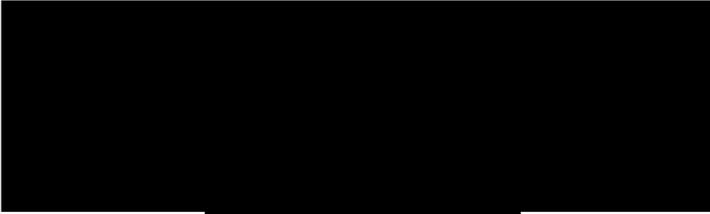
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9



FILE:



EAC 05 219 51721

Office: VERMONT SERVICE CENTER

Date: FEB 26 2008

IN RE:

Petitioner:



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

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.

Naura Deadrick
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.

Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act ("the Act") provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a U.S. lawful permanent resident is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence[.]

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 January 25, 2006 for failure to establish the requisite qualifying relationship to a lawful permanent resident and corresponding eligibility for preference immigrant classification. In its September 11, 2006 decision on appeal, which is incorporated here by reference, the AAO concurred with the director's determinations, but 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 16, 2006 which informed the petitioner that she had not submitted sufficient evidence that her former husband was a lawful permanent resident of the United States and that she was eligible for preference immigrant classification based on their former marriage. In response, the petitioner submitted a letter from her case worker, a copy of her former

husband's Florida driver's license, a partial copy of his Pakistani passport, a letter dated September 18, 2002 from an attorney verifying that the petitioner held L-2 nonimmigrant status based on her former husband's L-1 nonimmigrant status and a copy of an approval notice of the Form I-129, Petition for Nonimmigrant Worker, of which the petitioner's husband was the beneficiary.¹ These documents, combined with a search of Citizenship and Immigration Services (CIS) electronic records, show that the petitioner's former husband was the beneficiary of a petition for a nonimmigrant worker, valid from August 15, 2001 until August 1, 2002, but that CIS denied the request for an extension of the petitioner's former husband's nonimmigrant status on April 7, 2003. The search of CIS electronic records found no indication that the petitioner's former spouse was ever granted lawful permanent residency in the United States. Accordingly, the director denied the petition on January 17, 2007 on the grounds cited in the NOID. In his Notice of Certification, the director informed the petitioner that she could submit a brief to the AAO within 30 days after service of the notice. To date, the AAO has received nothing further from the petitioner.

As discussed above, the evidence submitted in response to the NOID fails to establish that the petitioner's former husband was a lawful permanent resident of the United States and that she was eligible for preference immigrant classification based on their former marriage. The petitioner has submitted no brief or additional evidence on certification. Accordingly, we concur with the director's determination that the petitioner has not established the requisite qualifying relationship with a U.S. lawful permanent resident, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act. As the petitioner has not demonstrated the requisite qualifying relationship, she has also not established her eligibility for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

The denial of the petition will be affirmed 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. The petitioner has not sustained that burden.

ORDER: The director's decision of January 17, 2007 is affirmed. The petition is denied.

¹ The petitioner also submitted letters from her minor children and documentation of their scholastic and extracurricular achievements. These materials are irrelevant to the grounds for denial of the petition.