



U.S. Citizenship
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FILE:

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Office: VERMONT SERVICE CENTER

Date: FEB 27 2008

IN RE:

Petitioner:

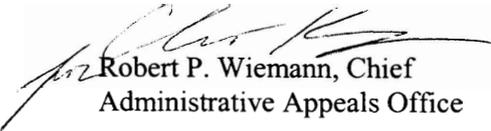
PETITION:

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:

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 January 25, 2005, for failure to establish the requisite good faith marriage. In our June 14, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner had not established that she resided with her spouse. 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 November 13, 2006, which informed the petitioner, through counsel, that she failed to establish the requisite residence and good faith marriage. The petitioner, through counsel, responded to the NOID with a brief and a copy of the petitioner's previously submitted affidavit. In his brief, counsel presented no further arguments and stated that no further evidence was available to establish the requisite residence and good faith marriage. Accordingly, the director denied the petition on July 2, 2007 finding that the petitioner failed to establish that she resided with her spouse and that she entered into her marriage in good faith.

On certification, although counsel does not present any additional evidence, he submits a brief in which he quotes the petitioner's entire affidavit and cites to evidence previously considered by the director and the AAO regarding the petitioner's good faith marriage. Counsel argues that "neither the Board of Immigration Appeals (BIA) nor the Immigration Judge made any finding of a bad-faith marriage" in the

proceedings before them. This argument is not persuasive. A review of the decisions of the BIA and the Immigration Judge indicate that the merits of the petitioner's claim of a good faith marriage were not considered. Rather, the decisions discussed whether the petitioner had met the requirements for reopening proceedings held in absentia. Further, it appears that counsel continues to confuse the petitioner's failure to carry her burden of establishing that she entered into her marriage in good faith with a finding by Citizenship and Immigration Services (CIS) that the petitioner entered into her marriage in order to circumvent immigration laws. In this instance, CIS is not finding that the petitioner's marriage was a sham marriage. Instead, the determination is that the petitioner has failed to meet her burden of establishing that she entered into the marriage in good faith. As we stated in our previous decision:

[T]he fact that a petitioner fails to establish a good faith marriage and to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage is a sham marriage and was entered into to evade the immigration laws.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. No further evidence has been submitted since that decision and counsel's arguments regarding the petitioner's good faith marriage are not persuasive. In addition, counsel has failed to address the director's finding that the petitioner failed to establish her residence with her spouse. Accordingly, we concur with the director's determination that the petitioner failed to demonstrate that she resided with her spouse and that she entered into her marriage in good faith. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the above petition will be affirmed for the reasons stated above, with each considered 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 July 2, 2007 is affirmed. The petition is denied.