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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 17 2005
EAC 03 199 52530

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special 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:
[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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting Director denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Vietnam who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that-

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

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.

The record reflects that the petitioner wed her citizen spouse [REDACTED] on August 21, 2001 in Vietnam. The petitioner's citizen spouse filed a Form I-130 petition on her behalf on October 25, 2001. The petitioner entered the United States on June 9, 2002 as a K-3 spouse. The Form I-130 was approved on June 16, 2003. The petitioner filed a Form I-485 on July 25, 2002. She filed a Form I-360 on June 25, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The petitioner initially submitted the following evidence to establish the bona fides of her marriage:

- A copy of her marriage certificate.
- A copy of her driver's license indicating that she resided at [REDACTED]
- A copy of her husband's driver's license indicating that he resided at [REDACTED]
- The petitioner's statement indicating that she met her husband through her aunt who resides in the United States and that they carried on a six-month courtship through letters, phone conversations and photographs. She stated that her husband traveled to Vietnam to visit her in August (when they wed), September and December 2001.

Because the petitioner furnished insufficient evidence to establish that she married her citizen spouse in good faith, she was requested on June 15, 2004, to submit additional evidence. The director listed evidence she may submit to establish that she entered into the marriage in good faith. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- Copies of photographs taken during the petitioner's wedding ceremony.
- Affidavit of [REDACTED] the petitioner's uncle who lives in California and traveled to Houston to check on the petitioner.
- Affidavit of [REDACTED] the husband of the petitioner's cousin who had met the petitioner and her spouse during the beginning of their marriage.

- Affidavit of [REDACTED] the petitioner's aunt who saw the relationship between the petitioner and her spouse develop. She said that the petitioner and her spouse "seemed very happy together and were respectful of one another, often embracing each other in [her] presence."
- The petitioner's affidavit dated stating that she was very much in love with [REDACTED] and was happy to be married to him. She further stated that when she left the home she shared with Andy and his parents, she took nothing with her.

The record contains scant evidence that the petitioner and her citizen spouse resided together. There is no evidence that they shared liabilities during their marriage. The petitioner stated that she and her husband resided together approximately eight months in her parents-in-laws' home. The petitioner's spouse was a student and worked part-time as a manicurist while they resided together. There is no evidence that the petitioner or her spouse obtained insurance policies naming one another beneficiaries. The petitioner provided no bank statements or other documents indicating that she and her spouse commingled their assets. There is no evidence of joint ownership of property such as a home or car. No children were born of the marriage. The evidence is insufficient to establish the petitioner married her citizen spouse in good faith.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.