

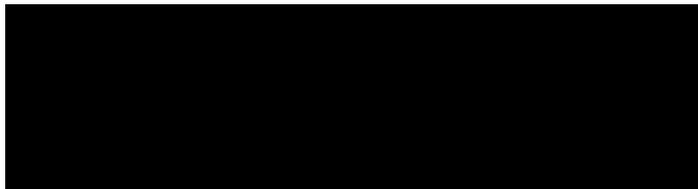
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

POINT TO POINT



B9

FILE: [REDACTED]
EAC 04 093 52524

Office: VERMONT SERVICE CENTER

Date: OCT 31 2009

IN RE: Petitioner: [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:

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, Director
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 The director's decision will be withdrawn and the petition will be remanded to the director for further action in accordance with this decision.

The petitioner is a native of Uruguay and a citizen of Italy who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, 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, 8 U.S.C. § 1151(b)(2)(A)(i), resided with the spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The director found that the initial evidence submitted by the petitioner did not establish a prima facie case for classification under Section 204(a)(1)(A)(iii) of the Act. Accordingly, the director issued a Request for Evidence (RFE) on September 23, 2004 asking the petitioner to submit additional documents to support her self-petition, including her marriage certificate, evidence of her husband's United States citizenship and her good moral character. The petitioner did not respond to the RFE and the director subsequently denied the petition.

On appeal, the petitioner explains that she was suffering from depression that worsened from September through December 2004, ultimately resulting in her hospitalization from approximately December 28, 2004 through January 15, 2005. The petitioner states, "I was unable to take care of my daily tasks or to gather the information requested." On appeal, the petitioner submits a copy of an Order issued by the Court of Common Pleas in Bradford County, Pennsylvania on December 31, 2004 and a letter from the petitioner's court-appointed attorney in that matter, [REDACTED]. The Order directs the Bradford County Bureau of Children and Youth Services to take the petitioner's 17-month old daughter into their custody due to the petitioner's failure to provide food and heated housing for the child. Ms. [REDACTED] verifies the petitioner's psychiatric hospitalization and resultant inability to care for her daughter and timely respond to the RFE. Ms. [REDACTED] also explains the difficulties that she and the petitioner face in obtaining the evidence requested in the RFE. Ms. [REDACTED] further states that she has been unable to locate pro bono immigration counsel for the petitioner.

On her Form I-290B, the petitioner did not state how many days she needed to submit evidence to the AAO, although both she and Ms. [REDACTED] explain that it will take longer than 30 days to obtain some of the evidence requested in the RFE. The petitioner dated her appeal March 4, 2005. To date, over seven months later, the AAO has received no further evidence or correspondence from the petitioner.

The regulation at 8 C.F.R. § 204.1(h) states:

Requests for additional documentation. When the Service determines that the evidence is not sufficient, an explanation of the deficiency will be provided and additional evidence will be requested. The petitioner will be given 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. If the director

determines that the initial 60-day period is insufficient to permit the presentation of additional documents, the director may provide an additional 60 days for the submission. The total time shall not exceed 120 days, unless unusual circumstances exist. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted.

Pursuant to this regulation, the director correctly denied the petition upon the petitioner's failure to respond to the RFE within 60 days. However, the evidence submitted on appeal indicates that the petitioner failed to timely respond to the RFE due to unusual and extenuating circumstances. Evidence submitted with the petition shows that the petitioner left her husband due to his abuse of her and their infant daughter on December 19, 2003 and was provided with emergency shelter by Bradford County Children and Youth Services. The petitioner obtained a Temporary Protection From Abuse Order from her husband issued by the Court of Common Pleas of Bradford County, Pennsylvania on February 18, 2004. Evidence submitted on appeal shows that the petitioner was subsequently involved in a custody action against her husband and became severely depressed for an extended period of time, resulting in her hospitalization and inability to timely respond to the RFE. Accordingly, we remand the matter to the director for consideration of the evidence submitted on appeal and issuance of an RFE, a Notice of Intent to Deny (NOID), or any other appropriate action.

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 this decision.