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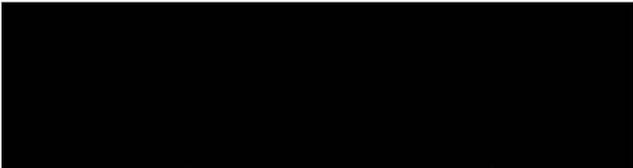
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Date: OCT 04 2006

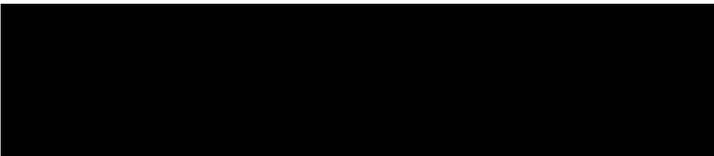
IN RE:

Petitioner:



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:



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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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.

The director denied the petition because the petitioner did not respond to a request for evidence (RFE) and the evidence submitted did not establish the petitioner's eligibility.

On appeal, counsel claims that he did not receive the director's notice granting the petitioner an extension of time to respond to the RFE. Counsel submits evidence to support that claim, but submits no further evidence to support the petition itself.

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).

An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences.

Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of the Ivory Coast who states in her affidavit that she “came to the United States in January 1992 on an A-3 visa as the domestic servant of the ambassador of the Ivory Coast.” On May 2, 2001, the petitioner married J-O-D-¹ a U.S. citizen, in Cook County, Illinois. On April 1, 2005, the petitioner filed this Form I-360. On July 21, 2005, the director issued a Request for Evidence (RFE) of: 1) J-O-D-’s U.S. citizenship, 2) the legal termination of his prior marriage, 3) additional evidence of the petitioner’s good moral character, 4) further evidence of the petitioner’s residence with J-O-D-, 5) her good faith entry into their marriage and 6) information regarding the current status of their marriage.

A response to the director’s first two requests is unnecessary. Citizenship and Immigration Services (CIS) records show that J-O-D- became a naturalized citizen of the United States on August 25, 1994. The 2000 amendments to section 204(a)(1)(A)(iii) of the Act also render the director’s second request unnecessary. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa) and 1154(a)(1)(A)(iii)(II)(aa)(BB), as amended by Pub. L. No. 106-386, Title V, Div. B, § 1503, 114 Stat. 1464, 1518-19 (2000). See Memo. from Johnny N. Williams, Exec. Assoc. Commissioner, CIS Off. of Field Operations, *Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S. Citizen or Lawful Permanent Resident*, 2, (Aug. 21, 2002) (“Proof of the abuser’s prior divorces shall no longer be required since a finding that the marriage is not legally valid due to the abuser’s bigamy cannot render the self-petitioner ineligible.”).

The present record contains no response to the director’s remaining four requests. After the 60 days granted to the petitioner to respond to the RFE had already passed, counsel submitted a letter requesting an extension of time to respond. On October 13, 2005, the director granted the petitioner an additional 60 days to respond. CIS never received a response from counsel. Consequently, the director denied the petition on February 3, 2006.

On appeal, counsel claims that he never received the director’s October 13, 2005 notice granting additional time to respond to the RFE. Counsel states that his office moved to a new address on June 1, 2005 and that he subsequently had problems receiving mail at his new address. Counsel claims that he notified CIS of his new address and submits a copy of an unsigned letter dated October 4, 2005. The record does not contain the original letter regarding counsel’s new address and counsel submits no evidence that the letter was actually sent to and received by CIS. Regardless of whether or not counsel received the director’s October 13, 2005 notice, counsel does not explain why he did not submit the requested evidence below or on appeal.

¹ Name withheld to protect individual’s identity.

We concur with the director's conclusion that the present record does not establish the petitioner's eligibility. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Qualifying Relationship and Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner states that she is married to J-O-D-. However, in an undated letter to the petitioner submitted with the Form I-360, J-O-D- states "My new spouse does not have any travel issue [sic]." In addition, in his letter (dated October 4, 2005) requesting an extension of time to respond to the RFE, counsel states, "We also have recently learned that the applicant's husband had forged divorce documents." Counsel provides no further explanation or relevant evidence. On page three of the RFE, the director specifically asked the petitioner to state whether or not she was still married to J-O-D- and requested the petitioner to submit evidence of any legal termination of their marriage. The petitioner submitted no response or corresponding evidence below or on appeal. The present record does not resolve this discrepancy in the evidence, sharpened by counsel's own statement, regarding the status of the petitioner's marriage to J-O-D- at the time this petition was filed. Accordingly, the present record fails to demonstrate that the petitioner had a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(1)(B) further prescribes that a self-petitioner must be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As the present record does not establish that the petitioner had a qualifying relationship with J-O-D-, the petitioner has not demonstrated that she was eligible for immediate relative classification based on their relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Joint Residence

On the Form I-360, the petitioner states that she lived with J-O-D- from August 2000 until November 2001 and that their last joint residence was in Mount Prospect, Illinois. In her affidavit, the petitioner indicates that the former couple resided together and states that J-O-D- kicked her and her uncle out of their apartment, yet the petitioner does not confirm the duration and location (or locations) of her alleged residence with J-O-D-. [REDACTED] the petitioner's uncle, states that in July 2001, he moved in with the petitioner and J-O-D- and that in August 2001, J-O-D- pushed him and the petitioner out of the apartment. Yet Mr. [REDACTED] also fails to provide any specific information regarding the location and duration of the former couple's purportedly joint residence. The petitioner's friend, [REDACTED] explains that she often called the petitioner at the former couple's home, but she does not indicate that she ever visited the petitioner at her marital residence and she provides no other probative information about the former couple's allegedly joint residence. In his undated letters written to the petitioner and submitted below, J-O-D- refers to the petitioner picking up her belongings, but his letters provide no specific information regarding the former couple's purportedly shared residence.

The petitioner submitted no documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) (and noted in the RFE) to corroborate her claim. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). While the record indicates that the petitioner was only legally married for approximately six months before she separated from J-O-D-, the petitioner states on the Form I-360 that the former couple resided together for over one year and the petitioner explains in her affidavit that they had an African wedding ceremony nine months prior to their civil marriage. The testimonial evidence does not explain why documentary evidence of the former couple's purportedly 15 month-long joint residence does not exist or is unobtainable. The affidavits of the petitioner, Mr. [REDACTED] and Ms. [REDACTED] alone do not establish that the petitioner resided with her abusive spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into Marriage in Good Faith

In her affidavit, the petitioner states that she met J-O-D- in 1995 and that he comforted her after her divorce from her first husband. The petitioner explains that J-O-D- was kind and caring and helped her go back to school. The petitioner reports that after they began dating regularly, J-O-D- came to her door with roses, proposed to her and said he would ask her parents for their blessing. The petitioner explains that she appreciated his respect for their African custom and states that they were married in a private African wedding ceremony at her uncle's home in August 2000 and had a civil ceremony in May 2001. Beyond this detailed description of the former couple's courtship and wedding, the petitioner provides no further explanation of their marital relationship or any of their shared experiences, apart from J-O-D-'s abuse. The petitioner states that after their wedding, J-O-D- "gradually became more possessive and violent," but she does not specify exactly when his abusive behavior began and does not indicate that her husband's abuse prevented them from obtaining joint documentation of their relationship.

Mr. [REDACTED] the petitioner's uncle, confirms that J-O-D- asked him for his blessing of the former couple's marriage. Mr. [REDACTED] states that when the former couple had their African wedding in August 2000, "They seemed fine and happy at the time. Since my niece never indicated anything wrong to me, I assumed everything was fine." Mr. [REDACTED] provides no further, probative details regarding the petitioner's allegedly good faith in marrying J-O-D-. Ms. [REDACTED] the petitioner's friend, states that the petitioner often came to talk about J-O-D- when the former couple started dating and that the petitioner told Ms. [REDACTED] how happy he made her. Ms. [REDACTED] states that she attended the former couple's civil wedding in May 2001 and that they "looked genuinely happy," but Ms. [REDACTED] provides no further, probative information about the petitioner's purportedly good faith marriage to J-O-D-.

The petitioner also submitted nine photographs of herself and J-O-D-. The photographs indicate that the former couple was together on at least eight occasions, but the pictures alone do not establish the petitioner's good faith in entering their marriage. The present record is devoid of any other relevant documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she

is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to establish that the petitioner entered into marriage with J-O-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The petitioner submitted a letter from the Clerk of the Circuit Court of Cook County, Illinois, which states that an index search did not disclose a record or complaint in the court's criminal division that pertained to the petitioner. However, the letter states that the search was done based on the petitioner's former last name from her first marriage. Accordingly, the director asked the petitioner to submit additional evidence of her good moral character. The RFE specifically stated, "Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable." The petitioner did not respond to the RFE and did not explain that local police clearances or state-issued criminal background checks were not available to her, as specified in the RFE and in the regulation at 8 C.F.R. § 204.2(c)(2)(v). The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner failed to demonstrate her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.