



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

JAN 11 2007

EAC 04 059 53566

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 without the issuance of a Notice of Intent to Deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii), finding that as the petitioner failed to submit evidence that her marriage was registered with an appropriate civil authority, the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for classification based upon that relationship.

The petitioner submitted a timely appeal.

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 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).

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied . . . by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

The petitioner in this case is a native and citizen of the Dominican Republic who indicated on the Form I-360 petition that she married E-S-¹, a U.S. citizen, in Rockland, New York on February 7, 2002. The petitioner filed this Form I-360 on December 22, 2003.² On August 27, 2004, as the marriage certificate contained in the file contained no certification that the petitioner's marriage was solemnized and returned to the clerk of the court for registration, the director issued a Request for Evidence (RFE) for further evidence that the

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by her spouse and subsequently withdrawn by her spouse, a Form I-485, Application to Adjust Status, denied by the Service on February 21, 2004, and a second, unadjudicated Form I-360 filed on August 14, 2006.

petitioner's marriage was registered with the appropriate civil authority. The petitioner responded to the RFE on October 25, 2004 by submitting a copy of the marriage certificate already contained in the file. The director denied the petition on January 4, 2005, finding that the petitioner failed to establish her eligibility.

On appeal, the petitioner submits a certified transcript of her marriage from the New York State Department of Health. While we note that in most instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the NOID required by regulation, we have reviewed the petitioner's appellate submission in order to determine whether the submission overcomes the director's stated grounds for denial. Upon review, we find the petitioner's appellate submission overcomes the director's grounds for denial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.