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U.S. Citizenship
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FILE: [REDACTED]
EAC 04 155 52751

Office: VERMONT SERVICE CENTER

Date: DEC 22 2005

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a native and citizen of Venezuela 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 evidence contained in the record did not establish eligibility.

On appeal, the petitioner submits a timely appeal with 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 or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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; [and]

* * *

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

The instant self-petition was filed by the petitioner on April 15, 2004 based upon her marriage¹ to United States citizen [REDACTED]. The petitioner seeks 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.

With the initial filing, the petitioner submitted the following documentation, to include:

- The petitioner's personal statement.
- Statements from three acquaintances.
- Copies of several photographs of the petitioner with her citizen spouse and family.
- A copy of the petitioner's auto insurance policy listing both the petitioner and her spouse.
- A sales receipt listing the petitioner and her spouse.
- Bank statements from the Bank of America listing both the petitioner and her spouse.
- A copy of the Certificate of Title for a 1990 Toyota in the petitioner's and her spouse's name.
- Copies of the petitioner's and her spouse's 2002 joint federal tax returns.
- Copies of cards and notes between the petitioner and her spouse.
- A letter from [REDACTED] M.S.W. intern at Catholic Charities.
- Evidence related to the petitioner's claim that she unknowingly entered into a bigamous marriage.

The director determined that the documentation submitted by the petitioner was not sufficient to establish eligibility. Therefore, on December 8, 2004, the director requested the petitioner to submit additional evidence. Specifically, the director requested evidence from the police department or court that the divorce document dissolving the petitioner's spouse's prior marriage was fraudulent. The director also requested reports and affidavits from police, judges, court officials, medical personnel, etc. to support a claim of abuse, evidence that the petitioner sought refuge in a shelter for the abused, photographs of injuries, affidavits from witnesses to the alleged abuse, or a specific and detailed statement from the petitioner describing the alleged abuse.

The petitioner did not respond to the director's request and the director denied the petition on March 30, 2005.

In a letter submitted on appeal, the petitioner claims that she did not personally receive a copy of the request for evidence because it was sent to Catholic Charities. The petitioner claims that after repeated inquiries with both the Service and Catholic Charities, she was unable to find the status of her case. Ultimately, the petitioner states that Catholic Charities gave her a copy of the request for evidence at the same time that they gave her the denial letter.

¹ The marriage certificate contained in the record indicates the petitioner and [REDACTED] were married on May 24, 2002 in St. Petersburg, Florida.

Upon review of the record, we can find no evidence that any representative from Catholic Charities has entered an appearance on behalf of the petitioner in this case. The release of information about a petitioner or the status of a case to parties not associated with the case is improper. Although the Form I-360 was completed on the petitioner's behalf by a representative from Catholic Charities, no entry of appearance was submitted in accordance with the regulation at 8 C.F.R. § 292.4.² While we understand that the director's issuance of the request for evidence to Catholic Charities was a genuine attempt to ensure the petitioner's protection from her alleged abuser, in this instance, given that no G-28 was contained in the record, it is not fair for the director to base his decision on the petitioner's failure to respond to the request for evidence when the request was not sent to the petitioner, but rather to an unrecognized representative.

In addition, we find that the director's decision was not in accordance with the regulation at 8 C.F.R. § 204.1(h), which 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 upon 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 upon the evidence previously submitted.**

[Emphasis added.]

In this instance, although the petitioner failed to respond to the request for evidence, at the time of the director's decision, as noted above, the record contained a number of documents submitted by the petitioner to establish her eligibility. However, despite the existence of these documents, the director denied the petition stating only that "the record did not establish your eligibility for the benefit sought," and "a determination as to your eligibility cannot be made." The director failed to discuss the existence of the evidence previously submitted and failed to specifically address why such evidence was not sufficient to meet the statutory and regulatory requirements.

Given the errors discussed above, we find that the matter must be remanded to the director for further consideration. The petitioner should be afforded an opportunity to provide any additional evidence the director deems warranted. The director's decision should include a discussion of the evidence contained in the record, including any evidence submitted by the petitioner in response to the director's request for evidence, if any is submitted. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for action consistent with the above discussion and entry of a new decision.

² The regulation states that an appearance "shall be filed" and "must be signed by the . . . petitioner to authorize representation in order to be recognized by the Service.