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**U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 03 2006
EAC 03 134 51563

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:



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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Japan 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 petitioner filed her Form I-360 on March 21, 2003.

The petitioner submitted the following evidence:

- A marriage certificate.
- An incident report from the Jefferson Parish Sheriff's Department.
- The petitioner's birth certificate.
- An abuse prevention order.
- A partial copy of the petitioner's son's Japanese passport.
- A copy of the petitioner's son's social security card.
- Photographs of the petitioner displaying minor cuts on her face and hands.
- A letter from Urara Hamada, a friend of the petitioner regarding an incident that occurred between the petitioner and her spouse at the Red Carpet Inn & Suites in New Orleans, Louisiana on May 28, 2002.
- A letter requesting the petitioner to appear at the District Attorney's office to give information on charges pending against her husband.
- A copy of a Form I-130 and Form I-485 with supporting documents.
- A copy of the petitioner's passport indicating that she entered the United States as an F-1 nonimmigrant student and again with a visa waiver as a temporary visitor.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on March 23, 2004, the director issued a notice requesting the petitioner to submit additional evidence (RFE) that she entered into their marriage in good faith and is a person of good moral character. The director denied the petition, finding that the petitioner had failed to timely respond to the RFE. On appeal, counsel for the petitioner acknowledges that their response was untimely but asks the director to consider the evidence because through no fault of the petitioner or her counsel, they were unable to gather the documentation requested. It is noted that counsel could have requested additional time to respond and did not but given the circumstances including Hurricane Katrina, the evidence will be considered.

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 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 . . . 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 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.

According to the evidence on the record, the petitioner bore a son in Japan on September 24, 1998. She wed United States citizen [REDACTED] on March 19, 2002 in New Orleans. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on May 8, 2002. The petitioner filed a Form I-485 concurrently with the Form I-130.

The first issue to be addressed in this proceeding is whether the petitioner established that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith.

The evidence consists of the following:

- The results of her son's paternity testing, indicating that the probability that her spouse is her son's father is 99.9997 percent.
- The petitioner's spouse's certificate of release or discharge from active duty on December 9, 1998 and evidence that his last duty assignment was in Japan.
- Statements from the petitioner and her spouse.
- Copies of correspondence with the U.S. Department of State New Orleans Passport Agency.
- A partial copy of the petitioner's son's U.S. passport.

The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. The petitioner provided scant information about her married life, courtship and marriage celebration, if any. She provided no joint income tax returns, bank statements, apartment leases, or bills.

The next issue to be addressed is whether the petitioner established that she is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F). In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The director requested, inter alia, relevant excerpts of law showing the maximum penalty for each charge she had received. The petitioner submitted copies of the arrest report and the final disposition of the charges, but failed to submit relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge. The petitioner failed to overcome the director's objections to approving the petition.

We concur with the director's determination that the petitioner failed to establish that she entered into the marriage in good faith and that she is a person of good moral character. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petition, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 petition is remanded to the director for further action in accordance with this decision.