

U.S. Citizenship
and Immigration
Services



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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
EAC 01 242 56035

Office: VERMONT SERVICE CENTER

Date: MAR 30 2006

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, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director revoked the approval of the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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 July 30, 2001. The Form I-360 was approved on about December 15, 2001. At an adjustment interview, the petitioner revealed that her first marriage had never been legally terminated. On August 31, 2004, the director sent the petitioner a notice of intent to revoke the approval of the petition. On August 26, 2005, the director revoked approval of the petition, stating that the petitioner had failed to establish that she was married to a U.S. citizen at the time of the filing the instant petition.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The [Secretary of Homeland Security] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

On appeal, counsel for the petitioner submits a brief and a statement from the petitioner. Counsel states that "under the totality of the circumstances," the petitioner is entitled to relief. Counsel asserts that the petitioner relied upon faulty advice of *notarios* and upon the judgment of the magistrate who married the petitioner and the citizen. The petitioner states that when she went to get married to the citizen, she told the magistrate that she had been previously married to a Mexican citizen but that they had lived apart for four years. She said that the magistrate married her anyway so she assumed that her second marriage was legal.

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;

* * *

According to the evidence on the record, the petitioner wed Mexican citizen [REDACTED] on February 9, 1983 in Mexico. The petitioner wed United States citizen [REDACTED] on September 24, 1990. The petitioner's marriage to [REDACTED] ended in divorce on June 28, 2002. On September 28, 2004, the petitioner obtained a divorce from her first husband, [REDACTED]

The sole issue to be addressed in this proceeding is whether the petitioner established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, which states in pertinent part:

(I) An alien who is described in subclause (II) may file a petition . . . under this clause 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 has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien –

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate *solely* because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years

According to the evidence on the record, the petitioner had not terminated her first marriage prior to marrying the United States citizen; therefore, her marriage to the citizen was not valid. The petitioner is not eligible to file a self-petition as an “intended spouse” because her marriage is not legitimate solely because of the bigamy of a U.S. citizen.

Counsel’s claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved.

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 appeal is dismissed.