

identity data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

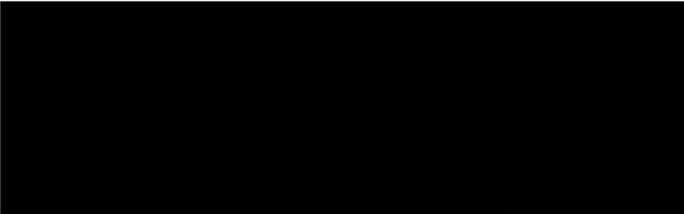
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



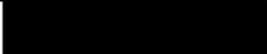
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

OCT 03 2006

EAC 05 180 52197

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.

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Trinidad and Tobago who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith and resided with her spouse.

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.

\* \* \*

(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 born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 last entered the United States as a B-2 nonimmigrant visitor on December 7, 1999. According to the evidence in the record, the petitioner married D-M-,<sup>1</sup> a United States citizen, on June 22, 2002 in Brooklyn, New York.

On June 8, 2005, the petitioner filed her Form I-360. Finding that the petitioner had failed to establish a prima facie case for classification under VAWA, on June 14, 2005, the director requested that the petitioner submit additional information to establish that she is a person of good moral character and that she married the alleged abuser in good faith. The petitioner responded to the request on August 29, 2005. On August 31, 2005, the director issued a notice informing the petitioner that the evidence on the record was insufficient to establish her eligibility and requested evidence that she entered into the marriage in good faith, resided with her spouse, and that she is a person of good moral character. The petitioner responded to the request on November 14, 2005. Finding the evidence insufficient to establish that the petitioner resided with her spouse and entered in the marriage in good faith, the director denied the petition.

#### *Good Faith Marriage*

The first issue to be addressed is whether the petitioner established that she entered into the marriage in good faith as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(H).

As evidence that she entered into the marriage in good faith, the petitioner submitted the following:

- The petitioner's statement dated February 23, 2006.
- Wedding photographs.
- A letter dated July 27, 2005 written by [REDACTED] indicating that the petitioner and her husband have been members of her congregation for the two past years.
- Miscellaneous correspondence addressed to the petitioner and her spouse at 1392 T A.,<sup>2</sup> Brooklyn, New York.

<sup>1</sup> The petitioner's name is abbreviated to protect his confidentiality.

<sup>2</sup> The address is abbreviated for privacy reasons.

- A copy of an Aetna card listing both the petitioner and her spouse.
- A copy of an Oxford Health Plan card issued to the petitioner alone.

In her statement submitted to Citizenship and Immigration Services (CIS) on appeal, the petitioner stated that she met her husband through a mutual friend in March of 2000. She said that they dated for two years, and D-M- proposed in April of 2002. She stated that D-M- was eager to marry sooner versus later. They wed in June 2002. The petitioner failed to describe their courtship in any detail. She failed to state her intentions at the time of her marriage. She provided scant details about their life together.

The remaining evidence, which consists of correspondence, copies of health insurance cards and wedding photographs, is also insufficient to establish that the petitioner entered into her marriage in good faith. While the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage.

Further, as noted by the director, the record is absent evidence of the commingling of funds and assets, or financial accounts or documentation, which demonstrate a good faith marriage. The petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act; hence, the petition may not be approved.

#### *Residence*

The petitioner must establish that she has resided with her spouse during their marriage. On her Form I-360, the petitioner indicated that she resided with her spouse from June 2002 until August 2004. As evidence of joint residence, the petitioner submitted copies of miscellaneous correspondence addressed to the petitioner and her spouse at [REDACTED]. It is noted that the postmarks on the correspondence are illegible. In the record are four police incident reports and a statement of personal service. Only two of the police incident reports indicate that the petitioner and her spouse both resided at [REDACTED]. The majority of the reports and the statement of service indicate that the petitioner's spouse resided at 300 S. P. The evidence is insufficient to establish that the petitioner resided with her spouse as required by 8 C.F.R. § 204.2(c)(1)(i)(D); therefore, the petition may not be approved. However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, 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.

The case must be remanded for issuance of a 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.

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.