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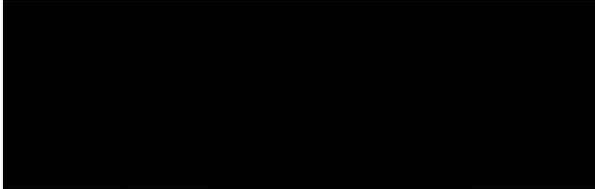
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Room 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY



FILE: [Redacted]  
EAC 04 205 52560

Office: VERMONT SERVICE CENTER

Date: OCT 04 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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 her abusive spouse was a citizen of the United States.

On appeal, the petitioner indicated that she would submit additional evidence within 30 to 40 days of filing the appeal. More than eight months have lapsed since the petitioner filed her notice of appeal and nothing more has been submitted for the record.

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 petitioner in this case is a native and citizen of Guyana who last entered the United States as a B-2 nonimmigrant visitor on July 30, 2001. On October 30, 2003, the petitioner married [REDACTED] in Cleveland, Ohio. The petitioner filed this Form I-360 on July 1, 2004.

#### *Qualifying Relationship*

The first issue to be addressed in this proceeding is whether the petitioner established that she has a qualifying relationship as the spouse, intended spouse, or former spouse of a citizen or lawful permanent resident of the United States as required by section 204(a)(1)(A)(iii) of the Act.

The petitioner failed to establish that she was married to a citizen or lawful permanent resident of the United States. On her Form I-360, the petitioner indicated that her spouse was a citizen of the United States by birth in the United States. On February 24, 2005, the director requested the petitioner to submit evidence to establish the United States citizenship of her husband. The director asked the petitioner to submit one of the following items:

- United States birth certificate.
- United States passport.
- Statement from a consular officer certifying United States citizenship.
- Certificate of Naturalization or Citizenship.

Form FS-240 Report of Birth Abroad of a Citizen of the United States.

Although the petitioner responded to the director's request for additional evidence, she failed to submit evidence relating to her husband's citizenship. She states that she did not have access to documents that would establish his citizenship.

The director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a citizen of the United States. The AAO concurs with the director's determination. The petitioner's claims on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

*Entry Into the Marriage in Good Faith*

Beyond the director's decision, the present record also fails to establish the petitioner's good faith entry into marriage with Mr. [REDACTED]. The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in pertinent 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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for establishing good faith entry into the marriage are contained in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), which states:

*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 evidence will be considered.

In her personal statement, the petitioner writes, [REDACTED] and I meet [sic] in August of 2003 on line at [REDACTED]. . . . No one capture my heart like he did. . . . After two months, we wanted to meet each other. . . . he asked me to marry him and live in Ohio with him. I accepted his proposal." The petitioner does not further discuss their courtship, wedding, joint residence or shared experiences, apart from Mr. [REDACTED] alleged abuse. The petitioner submitted an unsigned letter from [REDACTED] a letter from a friend named [REDACTED] copies of e-mail messages of a neighbor, her medical records and her husband's insurance card. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she is not required to do so, the petitioner does not explain why such documents do not exist or are unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner's medical records and the insurance card do not

indicate that the petitioner's spouse included the petitioner on his health insurance coverage. The unsigned letter cannot be given any weight. The letter and email messages do not provide insight into the petitioner's intentions at the beginning of her marriage. Accordingly, the current record fails to establish that the petitioner entered into her marriage with Mr. [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

The present record does not demonstrate that the petitioner had a qualifying relationship with an abusive U.S. citizen at the time this petition was filed pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. Beyond the director's decision, the present record also does not demonstrate that the petitioner entered into their marriage in good faith. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

Nonetheless, the case will be remanded because the director failed to issue a NOID before denying the petition. 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-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.

Accordingly, the case will be remanded for issuance of a NOID, 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.