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U.S. Department of Homeland Security
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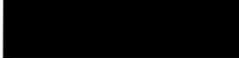
U.S. Citizenship
and Immigration
Services

B09

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FILE:



Office: VERMONT SERVICE CENTER

Date:

SEP 21 2006

EAC 04 231 51060

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:

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. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Cameroon 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.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 . . . 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.

According to the evidence in the record, the petitioner wed [REDACTED] a United States citizen, on July 16, 1990, in Watertown, Massachusetts. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on July 30, 1990. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The record further indicates that the petitioner and her spouse were divorced on September 18, 1992. The Form I-130 petition and the Form I-485 application were denied on May 6, 1993.

The petitioner filed the instant Form I-360 on October 22, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his spouse during their marriage. The director denied the petition on December 21, 2005, finding that as the petitioner had been divorced from his spouse for more than two years at the time of filing, he did not have a qualifying relationship within two years of the filing of the petition.¹ Additionally, the director found that the petitioner had failed to establish that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into his marriage in good faith.

On appeal, the petitioner does not dispute that he was divorced from his spouse for more than two years at the time of filing and fails to present any further evidence to demonstrate that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into the marriage in good faith.

Upon review, we first find that the record supports the determination that the petitioner was divorced for more than two years prior to filing the petition. Accordingly, we concur with the director's finding that the petitioner did not have a qualifying relationship as the spouse or former spouse of a United States citizen. Further, the record remains absent evidence of joint assets and liabilities, such as bank statements, financial accounts, insurance documents, leases or mortgages, utility bills or other documents to establish that the petitioner resided with his spouse and that he entered into his marriage in good faith. Finally, the record does not contain any evidence that the petitioner was battered by or subjected to extreme cruelty by his spouse.

However, although the petitioner's appeal does not overcome the director's stated ground for denial, we find the case must be remanded to the director for further consideration. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) requires the director to issue a Notice of Intent to Deny (NOID) in all cases where "the preliminary decision on a properly filed self-petition is adverse to the self-petitioner" Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

¹ Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act indicates that a self-petitioner must have been a bona fide spouse of a United States citizen "within the past 2 years" and must also demonstrate "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse."