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U.S. Citizenship
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FILE: [REDACTED]
EAC 05 169 53010

Office: VERMONT SERVICE CENTER

Date: **MAR 05 2008**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by a United States citizen.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

In this case, the director initially denied the petition on December 1, 2005 for failure to establish the petitioner's good-faith entry into marriage with her former husband. In its August 1, 2006 decision on appeal, the AAO concurred with the director's determination but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 23, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite good-faith entry into her marriage. Counsel responded to the NOID with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition on May 11, 2007 on the ground cited in the NOID. In his Notice of Certification, the director informed the petitioner, through counsel, that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

As the relevant evidence submitted below was discussed in our prior decision, incorporated here by reference, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted one joint bank account statement for the period of November 9 to December 9, 2004 and three photographs of the petitioner and her former husband. The bank statement is of no probative value because it is dated nine months after the petitioner states that she left her former husband. In her statement submitted below, the petitioner reported that “in February of 2004, [she] escape[d] without the documents” and that when she returned to look for the (unspecified) documents, her former husband assaulted her with a knife. However, although she is not required to do so, the petitioner does not explain why documentation of the usage of their bank account during their marriage is unobtainable from the bank. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The photographs are also insufficient to establish the petitioner’s good-faith entry into the marriage. One of the photographs is a copy of a photograph previously submitted on appeal. The remaining two photographs show the petitioner and her former husband in wedding attire. While these photographs indicate that a wedding took place, they do not establish the petitioner’s good faith in entering the marriage. In her letter submitted in response to the NOID, counsel claimed that the inclusion of the petitioner’s former mother-in-law in one of the photographs showed that the marriage was not a sham. The photograph referred to by counsel contains a picture of an older woman superimposed on a picture of the petitioner and her former husband. The composite picture does not indicate that all three individuals were photographed together. Regardless, the mere presence of the petitioner’s former mother-in-law at her wedding does not demonstrate that the petitioner entered the marriage in good faith.

Accordingly, the May 11, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director’s decision of May 11, 2007 is affirmed. The petition is denied.