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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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B9



FILE: [REDACTED]
EAC 06 014 50535

Office: VERMONT SERVICE CENTER

Date: FEB 19 2009

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)

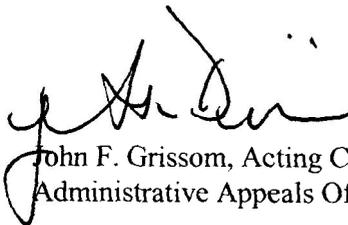
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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.

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 or a child of 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).

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 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 29, 2005 because the petitioner did not establish that she had a qualifying relationship with a U.S. citizen. In its November 22, 2006 decision on appeal, the AAO determined that in addition to a qualifying relationship, the petitioner had also not established her eligibility for immediate relative classification based on such a relationship, her entry into the qualifying relationship in good faith, the requisite battery or extreme cruelty and joint residence. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on April 6, 2007 which informed the petitioner that she had not submitted sufficient evidence to meet the five grounds cited in the AAO's November 22, 2006 decision. The petitioner submitted additional documents in response to the NOID, which the director determined did not establish the petitioner's eligibility. The director denied the petition on September 7, 2007 on the grounds cited in the NOID and certified the decision to the AAO for review. The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO.¹ To date, the AAO has received nothing further from the petitioner.

¹ Although the petitioner subsequently submitted a Form AR-11, Change of Address Card, the Notice of Certification was sent to the petitioner's address of record at the time pursuant to the regulation at 8 C.F.R. § 103.5a(a)(1).

The pertinent facts and procedural history, as well as the relevant evidence submitted initially, were discussed in our prior decision, incorporated here by reference. Accordingly, we will only repeat such facts as necessary and will only address the evidence submitted after our November 22, 2006 decision was issued.

The record shows that the petitioner entered the United States on June 8, 2000 as the K-1 nonimmigrant fiancée of M-C-,* a U.S. citizen. The petitioner did not marry M-C-, but subsequently married T-N-,* also a U.S. citizen, in Kennewick, Washington. On June 10, 2005, U.S. Citizenship and Immigration Services (USCIS) approved the Form I-130, Petition for Alien Relative, filed by T-N- on the petitioner's behalf. On August 8, 2005, USCIS denied the petitioner's Form I-485 application to adjust status pursuant to section 245(d) of the Act, which allows the adjustment of status of aliens admitted as K-1 nonimmigrant fiancées based only upon their marriage to their original fiancés. On September 29, 2005, the petitioner filed this Form I-360. On the Form I-360, Part 7, Section A, the petitioner listed M-C- as the U.S. citizen abuser through whom she sought immigrant classification.

In our prior decision, we explained that the petitioner did not establish a qualifying spousal relationship with M-C-, her original fiancé, because they were never married. An alien who has not married a U.S. citizen is only eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien believed that he or she had married a U.S. citizen with whom a marriage ceremony was actually performed, but whose marriage was not legitimate solely because of the U.S. citizen's bigamy. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB). The petitioner submitted no evidence that a marriage ceremony was actually performed between her and M-C-. The record is also devoid of any evidence that M-C- committed bigamy. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with M-C- pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

As stated in our prior decision and the director's NOID, because the petitioner did not establish a qualifying relationship with M-C-, she also failed to establish the requisite eligibility for immediate relative classification based on such a relationship, her good-faith entry into a qualifying relationship, joint residence and battery or extreme cruelty. The NOID specifically requested the petitioner to submit evidence that she had a qualifying relationship with M-C-, that she entered into the qualifying relationship with M-C- in good faith, that M-C- subjected her to battery or extreme cruelty during their qualifying relationship and that she resided with M-C- during the qualifying relationship. In response to the NOID, the petitioner submitted documentation relating to a Washington State Department of Social and Health Services, Children's Administration's investigation regarding the petitioner's present husband's sexual assault of their daughter. On an accompanying Constituent Assistance Authorization Form, the petitioner stated, "I am applying to be a legal permanent residence [sic] on I-360 based on fact that I am a battered woman and my daughter sexually assaulted [T-N-]." The petitioner submitted none of the evidence requested in the NOID regarding

* Name withheld to protect individual's identity.

her relationship with M-C-, through whom she claims eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The record shows that the petitioner never married M-C-. She has consequently failed to establish the requisite qualifying relationship with a U.S. citizen, her eligibility for immediate relative classification based on such a relationship, her good-faith entry into such a relationship, her residence with the U.S. citizen during the qualifying relationship and his battery or extreme cruelty during the qualifying relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on her relationship with M-C- and her petition must be denied.

To the extent the petitioner now seeks immigrant classification based on her relationship to her present husband, T-N-, such a material change to her petition cannot be made on appeal. *See* 8 C.F.R. § 103.2(b)(1). However, this decision is rendered without prejudice to the petitioner filing a new petition for classification under section 204(a)(1)(A)(iii) of the Act based on her relationship to T-N-.

The denial of the petition will be affirmed for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 September 7, 2007 is affirmed. The petition is denied.