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

U.S. Citizenship
and Immigration
Services

B9.

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 2 2 2009
EAC 07 115 50011

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:

[redacted]

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.

John F. Grissom, Acting 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 immigrant classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immigrant classification based upon that relationship.

The petitioner, through counsel, submits a timely appeal.

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, 8 C.F.R. § 1154(a)(1)(J) 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].

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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.
>
> (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate

> issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner . . . .

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who was paroled into the United States on June 3, 1993 for possible exclusion proceedings. On May 19, 2003, the petitioner married U.S. citizen in Pleasantville, New Jersey, and they resided together in Pleasantville, New Jersey. On June 18, 2004, filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which was approved on September 1, 2005. On April 5, 2006, withdrew the same I-130 petition, and therefore it was automatically revoked on December 8, 2006. The petitioner filed this Form I-360 on March 16, 2007. On October 3, 2007, the director issued a Request for Evidence (RFE) of, *inter alia,* the dissolution of the petitioner's first marriage prior to her marriage to The petitioner, through counsel, responded to the RFE on October 15, 2007. The director denied the petition on November 20, 2007, finding that the petitioner was not legally divorced under Ghanaian law until March 3, 2004, and thus she was not legally free to marry on May 19, 2003. The director concluded that the petitioner therefore had failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immigrant classification based upon that relationship.

On appeal, counsel for the petitioner argues that the petitioner is eligible for approval, stating that the petitioner obtained a valid customary divorce on April 17, 2001, prior to her new marriage, and that the Ghanaian court merely confirmed this divorce subsequent to the new marriage. Counsel states: "In the instant case, both the Order itself and the FAM make clear that the Ghanaian court order merely provides evidence to certify the nonjudicial divorce, but does not represent the date of dissolution." As supporting documentation, counsel submits a copy of *Matter of* 24 I&N Dec. 479 (BIA 2008). As will be discussed below, we concur with the ultimate determination of the director that the petitioner has failed to establish her eligibility for immigrant classification.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The record contains an Order, made under Section 41 (2) of the Matrimonial Causes Act of 1971 (Act 367), issued by the Circuit Court of Ghana on March 3, 2004, confirming that the customary marriage between and had been legally terminated on April 17, 2001. The evidence submitted on appeal corroborates counsel's argument that the date of the Order does not in and of itself represent the date of dissolution. As such, we do not dispute counsel's argument that the date of lawful termination of marriage between and is April 17, 2001. However, it is not clear that the petitioner and are one and the same. The petitioner's name as reflected on her birth certificate is Her first husband's name as reflected on the dissolution of customary marriage document is Other than on the dissolution of customary marriage document, nowhere in the record does the name appear. Thus, it is not clear that this document pertains to the petitioner. For this reason, the petition may not be approved.

Although we disagree with the director's factual determinations and analysis, we concur with his ultimate determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa),(cc).

The present record fails to demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that U.S. Citizenship and Immigration Services (USCIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. 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.