

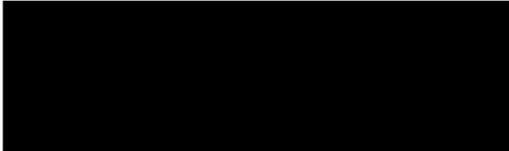
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



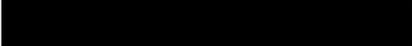
U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: VERMONT SERVICE CENTER Date: **MAR 21 2011**

IN RE: 

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)

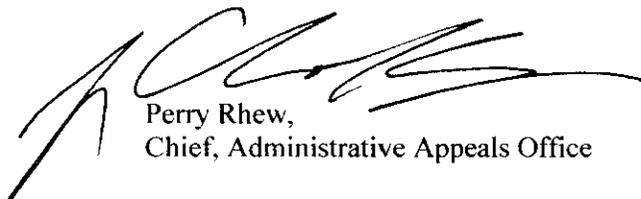
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew,  
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 appeal will be sustained.

The petitioner seeks immigrant classification under 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 determined that the petitioner failed to establish that she was eligible for immigrant classification as the spouse of a U.S. citizen, and denied the application accordingly. On appeal, the petitioner states that she believed that she was married to the U.S. citizen abuser. The petitioner submits a statement and several documents in support of her 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.

In addition, an intended spouse of U.S. citizen may self-petition for immigrant classification if the individual:

believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States[.]

Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act.

The evidentiary standard is provided in section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), which 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 filed under section 204(a)(1)(A)(iii) of the Act are further explained 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.

The record reflects that the petitioner is a native and citizen of Trinidad who was last admitted to the United States as a visitor on January 13, 1988. The petitioner states that she participated in a marriage ceremony with U.S. citizen E-O-<sup>1</sup> in New York on June 26, 1993. The couple had three children together. The petitioner filed her Form I-360 on March 11, 2010. On May 6, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the couple's legal marriage. The petitioner responded to the RFE with additional evidence, but did not submit a marriage certificate. On August 23, 2010, the director denied the petition, and the petitioner timely appealed.

Here, the record, as supplemented on appeal, demonstrates the petitioner's eligibility as the intended spouse of a U.S. citizen. The petitioner participated in an actual marriage ceremony with E-O- in New York on June 26, 1993 and she believed that she was legally married to him. *See Statement of Nicole Parke*, dated Sept. 20, 2010; *Wedding Invitation; Photographs of Marriage Ceremony; Findings of Fact*, dated Feb. 22, 1999 (issued in child support proceeding); *Letter from Lydia E. Colon-Fores*, L-M.S.W., dated Aug. 6, 2005 (relating history of the petitioner's courtship and marriage ceremony).

The petitioner has also established the existence and bonafides of her intended marriage. The record contains documentation that three children were born to the petitioner and her intended spouse as well as other probative and credible evidence of their marital relationship. *See Birth Certificates for the Petitioner's Children; Statement of [REDACTED]* (providing detailed testimony regarding courtship, wedding ceremony, shared residence, and other experiences); *Letter from [REDACTED]* (same); and [REDACTED]

The director erroneously determined that because the petitioner did not have a marriage certificate, she was ineligible for immigrant classification as the abused spouse of a U.S. citizen. The director did not address the petitioner's eligibility under the intended spouse provision. U.S. Citizenship and Immigration Service (USCIS) records show that E-O- immigrated to the United States based on an alien relative petition filed by another woman, his marriage to whom was still valid at the time he participated in a marriage ceremony with the petitioner. Accordingly, the petitioner and E-O- would have been unable to obtain a marriage license in New York without providing false information regarding the marriage of E-O- and any marriage contracted by the petitioner and E-O- would have been void. *See N.Y. Dom. Rel. Law § 6 (McKinney 2010)* (a marriage is void if either

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<sup>1</sup> The petitioner's intended spouse's name is withheld to protect his identity.

party has a living spouse by a former marriage that has not been annulled or dissolved); N.Y. Penal Law § 255.15 (McKinney 2010) (defining the felony crime of bigamy). The record thus shows that the petitioner could not have obtained a marriage certificate. Her marriage to E-O- was not legitimate solely because of his bigamy, and the petitioner has established a qualifying relationship as the intended spouse of a U.S. citizen under Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act.

Additionally, the record supports the director's finding that the petitioner met all of the other eligibility requirements 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. Here, that burden has been met. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.