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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: NOV 0 7 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self- 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) and Request for Employment Authorization under Section 106 of the Immigration and Nationality Act, 8 U.S.C. § 1105a

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action.

The petitioner seeks employment authorization under section 106(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1106(a), as an alien battered or subjected to extreme cruelty by her nonimmigrant spouse. The petitioner did not file an application for employment authorization (Form I-765), but instead filed a self-petition (Form I-360) for immigrant classification as the abused spouse of a United States citizen under section 204(a)(1)(iii) of the Act. The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and eligibility for immediate relative classification based on such a relationship because the petitioner's spouse is an H1-B nonimmigrant.

On appeal, counsel asserts that the director improperly denied the petition.

Applicable Law

Section 106 of the Act states:

> (a) In General. In the case of an alien spouse admitted under subparagraph (A), (E)(iii), (G), or (H) of section 101(a)(15) who is accompanying or following to join a principal alien admitted under subparagraph (A), (E)(iii), (G), or (H) of such section, respectively, the Secretary of Homeland Security may authorize the alien spouse to engage in employment in the United States and provide the spouse with an "employment authorized" endorsement or other appropriate work permit if the alien spouse demonstrates that during the marriage the alien spouse or a child of the alien spouse has been battered or has been the subject of extreme cruelty perpetrated by the spouse of the alien spouse. Requests for relief under this section shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii).
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> (b) Construction. The grant of employment authorization pursuant to this section shall not confer upon the alien any other form of relief.

As referenced in section 106(a) of the Act, section 204(a)(1)(A)(iii) of the Act prescribes the requirements for immigrant classification of aliens who have been battered or subjected to extreme cruelty by their U.S. citizen spouses. Aliens granted immigrant classification as abused spouses under section 204(a)(1)(A)(iii) of the Act are called VAWA (Violence Against Women Act) Self-Petitioners and are eligible to work in the United States and obtain employment authorization documents. Sections 101(a)(51) and 204(a)(1)(K) of the Act, 8 U.S.C. §§ 1101(a)(51), 1154(a)(1)(K).

VAWA self-petitioners apply for employment authorization by filing a Form I-765, Application for Employment Authorization with the Vermont Service Center. The procedures for immigrant abused spouses to obtain employment authorization are explained on the U.S. Citizenship and Immigration Services (USCIS) website and on the instructions to the Form I-765. *See* Battered Spouse, Children

and Parents, Working in the United States, available at http://www.uscis.gov/humanitarian/battered-spouse-children-parents (last accessed Oct. 27, 2014) (VAWA self-petitioners must file a Form I-765 with the Vermont Service Center to apply for employment authorization). *See also* Instructions, Form I-765, Application for Employment Authorization, p.6, available at http://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf (last accessed Oct. 27, 2014) (explaining the employment authorization application process for abused spouses whose Form I-360 self-petitions have been approved). It is these procedures for filing the application for employment authorization that are referenced in section 106(a) of the Act for nonimmigrant abused spouses.

On appeal, counsel asserts that the director erroneously denied this immigrant petition (Form I-360) because the petitioner "followed the same procedures applicable to all other VAWA self-petitioners under 204(a) by filing for I-360. . . . " Counsel is mistaken. The procedures referenced in section 106(a) of the Act are those pertaining to the application for employment authorization (Form I-765) of VAWA self-petitioners. The petitioner filed only a Form I-360, which is a self-petition for immigrant classification as the abused spouse of a U.S. citizen or lawful permanent resident. The petitioner's spouse is a nonimmigrant. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the director correctly denied her petition. The petitioner did not file an application for employment authorization, the only benefit for which she may be eligible under section 106 of the Act.

Nonetheless, U.S. Citizenship and Immigration Services (USCIS) has not yet issued formal guidance and public instructions on the implementation of section 106(a) of the Act and the director did not consider the petitioner's eligibility for employment authorization under those provisions. Although the petitioner did not file the correct form, she did submit evidence relevant to all the eligibility criteria of section 106(a) of the Act, including documentation of her marriage to an H1-B nonimmigrant, her admission and current status as an H4 nonimmigrant and, in support of her claim of battery and extreme cruelty, her affidavit, statements from two friends and a psychological evaluation. Accordingly, the matter will be remanded to the director for determination of whether the petitioner is eligible for employment authorization under section 106(a) of the Act. In the interest of administrative efficiency, we enclose a Form I-765 Application for Employment Authorization for the petitioner to complete and submit to the Vermont Service Center.

Conclusion

The petitioner incorrectly filed a Form I-360 self-petition for immigrant classification as the abused spouse of a U.S. citizen. The director correctly denied the Form I-360 because the petitioner's spouse is not a U.S. citizen and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

However, the petitioner explicitly stated that she was seeking employment authorization under section 106(a) of the Act as the abused spouse of an H1-B nonimmigrant. The petitioner submitted relevant evidence, but the director did not adjudicate her claim. Because the agency has not yet published guidance on the implementation of section 106(a) of the Act, the director's decision shall

be withdrawn and the matter remanded to the director for further action and issuance of a new decision.[1]

ORDER: The August 1, 2013 decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for further action and issuance of a new decision on the petitioner's request for employment authorization under section 106 of the Act.

[1] Because the director properly denied the petitioner's Form I-360 immigrant petition, any subsequent adverse decision on that petition need not be certified to the Administrative Appeals Office for review. The director shall adjudicate the petitioner's request for employment authorization under section 106(a) of the Act and may issue a separate decision on the petitioner's Form I-765 if the petitioner submits that application on remand.