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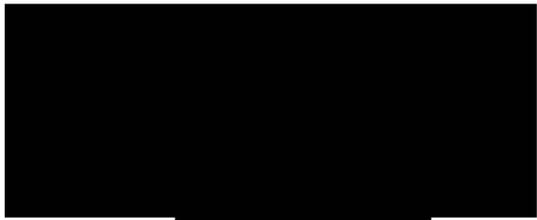
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



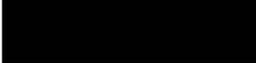
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **APR 03 2008**

EAC 05 069 52289

IN RE:

Petitioner:



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.

Maura Deadrick
for 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 The decision of the director will be withdrawn and the petition will be approved.

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 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 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 November 15, 2005 because the petitioner failed to establish a qualifying relationship with her U.S. citizen husband and her corresponding eligibility for immediate relative classification. In its July 13, 2006 decision on appeal, the AAO concurred with the director's determinations 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 4, 2006, which informed the petitioner, through counsel, that she had failed to establish a qualifying relationship and eligibility for immigrant classification based on such a relationship. The petitioner, through counsel, responded to the NOID with additional evidence, which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition on February 16, 2007 on the grounds cited in the NOID and certified his decision to the AAO for review. On certification, counsel submits a brief.

The pertinent facts and procedural history, as well as the relevant evidence submitted below, were discussed in our prior decision, incorporated here by reference. Accordingly, we will only repeat such facts as necessary here and will only address the evidence submitted after our July 13, 2006 decision was issued. The record shows that the petitioner married her first husband in the Philippines in 1978.

The petitioner subsequently married her second husband, D-Y-¹, a U.S. citizen, on June 29, 1987 in Colorado. On December 21, 1987, the former Immigration and Naturalization Service (INS, now Citizenship and Immigration Services (CIS)) denied D-Y-'s Form I-130, Petition for Alien Relative, filed on the petitioner's behalf because the record showed that the petitioner's first marriage had not been terminated prior to her 1987 marriage to D-Y-. The petitioner's first spouse died on August 9, 1990. On July 2, 1996, the petitioner remarried D-Y- in California.

In our prior decision, we questioned the validity of the death certificate of the petitioner's first spouse because it listed an individual other than the petitioner as his surviving spouse and the record contained no corroborative evidence that the individual listed on the death certificate was, in fact, the petitioner's first spouse. In response to the NOID, the petitioner resubmitted registered copies of her 1978 marriage certificate to her first husband and his death certificate. The birth date and residence of the petitioner's first husband listed on the 1978 marriage certificate correspond to those listed on his death certificate. These documents establish that the petitioner's first marriage was terminated, at the latest, on August 9, 1990, the date of her first husband's death.

The director nonetheless concluded, "[T]he self-petitioner did not submit evidence of the legal termination of her marriage to her first spouse, other than to submit a copy of his death certificate." The director further determined that because her first marriage was not legally terminated at the time of her 1987 marriage to D-Y-, the petitioner was ineligible to "file a petition based on [her] own bigamous marriage."

The director has inaccurately assessed the relevant evidence. The record shows that the petitioner's marriage to D-Y- in 1987 was invalid because her first marriage had not been legally terminated at that time. As counsel notes on certification, the INS denied D-Y-'s first Form I-130 petition on this very basis. Because their 1987 marriage was invalid, the petitioner and D-Y- remarried in 1996. At that time, the petitioner's first marriage had been legally terminated. We note that the record contains a petition for divorce filed by the petitioner against her first husband in December 1987 in Colorado, but there is no evidence of the outcome of that proceeding. Yet regardless of whether or not the divorce was granted, the petitioner's first marriage was ultimately terminated by the death of her first spouse in 1990.

The record shows that the petitioner had a qualifying relationship with D-Y- based on their 1996 marriage and that she was eligible for immediate relative classification based on their relationship. The petitioner has thus overcome the grounds for denial of the petition. She is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition will be approved.

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 sustained that burden.

¹ Name withheld to protect individual's identity.

ORDER: The director's decision of February 16, 2007 is withdrawn. The petition is approved.