



U.S. Department of Justice
Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Copy

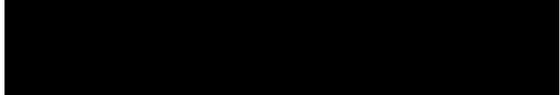
FILE: [Redacted]
EAC 99 124 52665

Office: Vermont Service Center

Date:

AUG 10 2000

IN RE: Petitioner:
Beneficiary:



APPLICATION: 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)

IN BEHALF OF PETITIONER:



Identifying data should
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Peru who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) has resided in the United States with the citizen or lawful permanent resident spouse; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the director erred in finding that the petitioner had not established eligibility for the benefits sought. He states that numerous items of evidence were previously submitted which established the petitioner's eligibility. He submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

- (F) Is a person of good moral character;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States in March 1986 as an undocumented alien. The petitioner married her United States citizen spouse on September 16, 1988 at Los Angeles, California. On March 8, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) requires that the self-petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(ii) requires that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service.

The director noted that a petition for dissolution of marriage was filed by the petitioner's spouse on May 16, 1990. However, the petitioner failed to submit proof of the status of the divorce proceedings as had been requested on April 2, 1999. Because it was not clear that the petitioner was the spouse of a United States citizen when the petition was filed, the director denied the petition.

On appeal, the petitioner states that no final judgment has been filed to end her marriage, and that she is still legally married to her citizen spouse. She submits a certification from the Clerk of the Superior Court, County of Los Angeles, certifying that no final judgment has been entered on the complaint for divorce filed on May 16, 1990.

The clerk also indicates that "under California law the marriage of these parties is not legally dissolved unless dissolved in another county." While it is not known whether the petitioner's marriage was dissolved in another county, the documents furnished by the petitioner imply that the petitioner is no longer married to her citizen spouse. As noted by the director, although the petitioner was married in 1988, the record shows that she filed taxes as a single person in 1988, 1989, and 1990, and that she filed as head of household from 1991 to 1997 in which she listed her children as her dependent.

The petitioner's claim on appeal that she filed as "single" on the misadvice of her tax preparer is not persuasive. It is noted that the petitioner filed the 1988, 1989, and 1990 income tax returns on

April 10, 1991. Further, as noted by the director, the record contains a grant deed which was registered in the Recorder's Office of Los Angeles on December 20, 1996 which refers the petitioner as "an unmarried woman."

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). The petitioner has failed to establish that she was legally married to the alleged abuser when the petition is properly filed with the Service. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

8 C.F.R. 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with her U.S. citizen spouse.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's request on April 2, 1999. The discussion will not be repeated here. The director noted, however, that (1) the letter from [REDACTED] states that the petitioner lived in his house; he did not state that she and her husband resided together, and (2) the other two affidavits furnished did not state that she and her husband resided together.

On appeal, the petitioner reiterates her claim that she resided with her spouse at his mother's apartment at [REDACTED] until she told the petitioner that she no longer wanted her there and moved back to her Lakeshore address at the beginning of 1990. She claims that she received her mail at the Robertson address and also at the Lakeshore address which she kept because her brother was living there.

The petitioner submits on appeal (1) another letter from her Lakeshore landlord stating that the petitioner had a man staying at her apartment during the year 1990; (2) another from her friend, [REDACTED] stating that she knows for a fact that the petitioner and her spouse lived together, that she was living with him at his mother's house, and that during the first months of 1990, she saw the petitioner at her old apartment living with her spouse; (3) a letter from her brother stating that he and the petitioner resided together at their Lakeshore apartment, after her marriage she moved to live with her husband in West Los Angeles, and in February 1990, while he (the brother) was out of town, the petitioner and her spouse moved into the Lakeshore apartment.

Subsequent to the appeal, the petitioner submits a copy of a prescription receipt for "ortho novum" from a Thrifty Drug Store dated July 1, 1989, showing her address at the time as [REDACTED]. Also contained in the record is a copy of the petitioner's California Identification Card which shows the Robertson address.

These documents and other documents in the record establish that the petitioner and her spouse had resided together and has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(D).

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's request for additional evidence on April 2, 1999. He noted that the petitioner filed taxes as a single person in 1988, 1989, and 1990, and that she filed as head of household from 1991 to 1997; the grant deed, register at the Recorder's office in Los Angeles on December 20, 1996, refers to the petitioner as an unmarried woman; and that the record shows she rarely used her married name.

On appeal, the petitioner states that her husband filed a joint tax return for tax year 1988 for wages he earned. She claims that not realizing he had filed a joint tax return, she filed her own taxes for 1988 as well as 1989 and 1990 to report her income, and that she filed as single on the misadvice of her tax preparer. She further claims that for her protection and safety from her husband, she chose to file her tax returns from 1991 to 1997 as head of household, so that he would not find out about her income and take it from her. The petitioner further claims that she had not heard from her husband nor has she seen him since December 1991, and she has chosen to use her maiden name for her protection as she is afraid he is going to find her and continue to abuse her.

As previously indicated, the petitioner's claim on appeal that she filed as single on the misadvice of her tax preparer is not persuasive. As noted by the director, the record shows the petitioner rarely used her married name and documents furnished show she is "single" or "unmarried woman." Further, the petitioner's claim that she has chosen to use her maiden name for her protection as she is afraid her spouse is going to find her and continue to abuse her is incredible. While the petitioner claimed that she returned to her own Lakeshore apartment at the beginning of 1990 with her spouse, the documents contained in the record reflect that she continued to reside at this Lakeshore apartment until approximately October 1996 when she purchased her own place at [REDACTED]

The petitioner submits an Internal Revenue Service printout of a 1988 joint tax return filed by the petitioner's spouse reporting his own business income. While the record reflects that the petitioner was working during this period, her income was not included in this tax return. It appears that the filing of this joint tax return by her spouse is not so much as to establish good-faith marriage but to help him in his business.

Subsequent to the appeal, counsel submits a copy of a prescription label for "ortho novum" from a Thrifty Drug Store dated July 1, 1989, showing the petitioner's married name and her address at that time as [REDACTED]. Counsel argues that this prescription indicates that the petitioner was indeed using her husband's last name, and the fact that she was purchasing birth control pills indicate that she was indeed involved sexually with her husband. He further argues that these two factors, coupled with the address information on the label, provide strong corroboration that the petitioner and her husband indeed entered into marriage in good faith.

The value of this evidence, however, is diminished by the lack of credible evidence furnished by the petitioner to establish good-faith marriage. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). The petitioner has failed to submit credible evidence to establish that she entered into the marriage to the citizen in good faith. Furthermore, while documents in the record establish that the petitioner and her spouse had resided together, the petitioner, however, failed to establish that she entered into the marriage to the U.S. citizen in good faith pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.