



U.S. Department of Justice
Immigration and Naturalization Service

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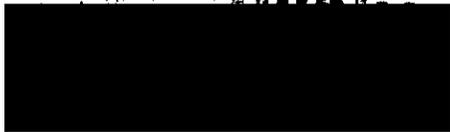
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Vermont Service Center
EAC 99 270 51275

Date: AUG 22 2000

IN RE: Petitioner:
Beneficiary:



Copy

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 removed to 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 case will be remanded to the director for further action.

The petitioner is a native and citizen of [REDACTED] 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 is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A), based on that relationship.

On appeal, counsel asserts that the petitioner has furnished divorce decrees of prior marriages of the petitioner and of the petitioner's spouse. She states that the petitioner has provided every document that she could realistically obtain from the National City Service office holding her file, and she relied on that office to provide the documents they were holding in her file. Counsel argues that although the director stated that the divorce document "Sentencia" furnished by the petitioner to establish the termination of the second marriage of her spouse was not satisfactory evidence of the legal termination of the marriage, he has provided no reason why it is not satisfactory, nor did he cite any failure of the document to be satisfactory. Counsel further argues that although the director stated that the Sentencia is not the final decree, the director's decision goes on to state that the Sentencia ended the marriage of the petitioner's spouse in 1985.

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 on April 1, 1996. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on June 4, 1998 at [REDACTED]. On September 14, 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.

Pursuant to 8 C.F.R. 103.3 (a), when a Service officer denies an application or petition, the officer shall explain in writing the specific reasons for denial. The director determined that the petitioner failed to submit evidence of termination of all marriages of the petitioner's spouse. However, although he also determined that the Sentencia is not a final divorce decree, as argued by counsel, the director has provided no reason why this document is not satisfactory when he in fact noted that the Sentencia ended the marriage of the petitioner's spouse in 1985.

The case will, therefore, be remanded for the purpose of a new decision addressing the above. In addition, the director may review the record of proceeding and determine whether other criteria listed in 8 C.F.R. 204.2(c)(1) is satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.