



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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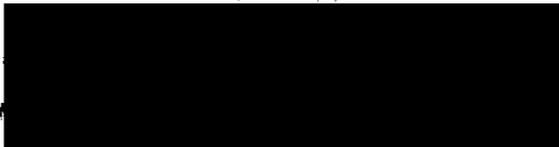
DEC 29 2000

FILE: [Redacted]  
EAC 00 004 50143

Office: Vermont Service Center

Date:

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: Self-represented

Identifying data deleted 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

Mary C. Mulrean, Acting 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 Egypt 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) 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; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident spouse; (5) is a person of good moral character; (6) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (7) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner submits additional evidence and states that she did not realize it had to be sent since all the information the Service needed could easily be obtained.

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 record reflects that the petitioner last entered the United States as a student on August 18, 1992. The petitioner married her claimed United States citizen spouse on August 28, 1997 at Pasadena, Texas. On September 30, 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 spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) requires that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Additionally, 8 C.F.R. 204.2(c)(1)(i)(B) requires that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The applicant claimed in the Form I-360 that her spouse was born in Egypt. Because no evidence was furnished to establish her spouse's status in the United States, the petitioner was requested on January 19, 2000 to submit evidence of his status. She was also requested to submit proof of legal termination of her spouse's prior marriage. She was advised that based on the information furnished relating to her spouse, his immigration status cannot be verified through Service records.

Subsequent to the appeal, the petitioner furnished additional information regarding her spouse. Based on this information, a search of the Service electronic file confirms that the

petitioner's spouse was naturalized a United States citizen on April 10, 1992. The petitioner has, therefore, overcome this portion of the director's findings.

As evidence of termination of the prior marriage of the petitioner's spouse, the petitioner on appeal submits a letter from Fr. [REDACTED] Pastor of St. Mary and Archangel Michael Coptic Orthodox Church of [REDACTED] stating that the wife of Mr. [REDACTED] (the petitioner's former spouse) passed away and that he personally performed the funeral rite over her body. It is noted, however, that no mention was made in this letter regarding the date of death of Mr. [REDACTED] wife. Nor is this letter a legal document or a legal death certificate issued by the state of Texas. It is further noted that although the petitioner failed to indicate on the Form I-360 the number of times she has been married, the petitioner's marriage license, issued on November 2, 1997, shows that the petitioner has been married twice, to "Lotfy and Michael." Her Egyptian passport also reflects that she is the spouse of Lotfy and contains information on her son, Yehia, born of December 5, 1980.

The record, however, does not contain proof of legal termination of the petitioner's prior marriages. A prior marriage not legally terminated is a bar to consideration of the marriage upon which the visa petition is based. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966). The petitioner has, therefore, failed to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

8 C.F.R. 204.2(c)(1)(i)(C) requires that the self-petitioner must establish that she is residing in the United States when the petition is filed. The petitioner furnished no evidence to establish that she has met this requirement. She was, therefore, requested on January 19, 2000, to submit evidence that she is residing in the United States or was residing in the United States at the time she filed the self-petition. Because no additional evidence was furnished, the director denied the petition.

On appeal, the petitioner submits a copy of her passport and states that her passport expired on November 16, 1995, and since that date she was not issued any other travel document to be able to go anywhere.

The Form I-360 shows that the petitioner resided with her spouse from August 25, 1997 until August 19, 1999. She claimed in a statement dated September 27, 1999 that she suddenly left Houston, Texas, because she and her son could not stay with her husband as he was abusing them. While the petitioner failed to indicate the state or country where she moved, the Form I-360 shows Albuquerque, New Mexico as the petitioner's address. No documentary evidence, however, was furnished to establish that she was, in fact, residing in New Mexico or anywhere in the United States when the petition

was filed on September 30, 1999. Furthermore, an expired passport or travel document is not evidence that the petitioner is residing in the United States.

The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(C).

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. Additionally, 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.

Because the petitioner furnished no evidence to establish that she has met these requirements, she was requested on January 19, 2000 to submit additional evidence. The director listed examples of the evidence she may submit to show joint residence and good-faith marriage. In response, the petitioner stated she did not have these documents because her spouse would not let her have them.

On appeal, the petitioner submits a copy of State Farm automobile insurance effective April 6, 1999 to October 29, 1999, issued to her spouse as the insured and the petitioner and her son as drivers, and reflects their address as [REDACTED] in [REDACTED] a copy of Modern Pest Control receipt dated June 14, 1999, addressed to the petitioner at [REDACTED] a copy of the petitioner's driver's license showing an expiration date of December 20, 2001, and her address as [REDACTED] joint bank statements for the period February 24, 1999 to May 24, 1999; copies of eleven cancelled checks reflecting joint bank accounts at Bank One written during the period December 1997 and May 1999; joint rental agreement for the [REDACTED] home signed on December 29, 1997; copies of the petitioner's 1998 W-2 tax statements; a joint letter from members of her church; and copies of photographs of the petitioner, her spouse, and families.

These documents and other documents in the record establish that the petitioner and her U.S. citizen spouse had resided together, and that she entered into the marriage to the U.S. citizen in good faith. The petitioner has, therefore, overcome these findings of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(D) and (H).

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the

United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the petitioner failed to submit evidence to establish that she is a person of good moral character. Examples of evidence the petitioner may submit to establish good moral character under 8 C.F.R. 204.2(c)(2)(v) was listed by the director in his request for additional evidence on January 19, 2000.

On appeal, the petitioner submits a joint letter from members of her church indicating that the petitioner has shown good behavior, she participated in church activities, and that they found her to be a person of good moral character. The petitioner, however, submitted neither a local police clearance or a state-issued criminal background check from Texas and New Mexico, nor did she submit a self-affidavit attesting to her good moral character.

The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished no evidence to establish that her removal to Egypt would be an extreme hardship to herself or to her child, the petitioner was requested on January 19, 2000 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. No additional evidence was furnished.

On appeal, the petitioner states that she is afraid for her life if she goes to Egypt. She submits articles she claims as "some examples of the persecution of Coptic Orthodox Christians in Egypt," and states that she might be one of these examples.

The petitioner's claim that if she were to return to Egypt she will suffer persecution, is misplaced; nor is it the proper forum for a self-petition under section 204(a)(1)(A)(iii) of the Act. Furthermore, the petitioner has not established that she is likely to be the specific target of crime because of her religion.

The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

Although not addressed by the director, the evidence of record is insufficient to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen 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 during the marriage pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

While the petitioner claims in her letter of September 27, 1999 that her husband abused her and her son, and that he threatened to kill her one day, no evidence, other than this one letter, was furnished to support her claim. The petitioner claims that she filed a police report in Harris County Sheriff's Department. However, neither this report nor other evidence is contained in the record of proceeding to establish that the petitioner has been battered by, or has been the subject of extreme cruelty as provided in 8 C.F.R. 204.2(c)(1)(i)(E).

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.