



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



FILE: [Redacted]
EAC 00 161 50512

Office: Vermont Service Center

Date: NOV 27 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: Self-represented

Identifying data redacted to prevent clearly unwarranted invasion of persons' 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 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 citizen of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive United States citizen spouse prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the applicant requests an interview in order that she may have the chance to explain her situation because she thinks it is not fair what her spouse did to her and her daughter, and she also wants to let the Service know that she did not want or ask for the divorce. She submits a statement from a friend stating that she accompanied the petitioner to the Service office in May 1999 and the Service official at the counter did not advise the petitioner that she could apply for adjustment as an abused spouse.

Oral argument, however, is limited by regulation to cases where cause is shown. A request for oral argument must set forth facts explaining specifically why oral argument is necessary. 8 C.F.R. 103.3(b). In this case, no cause for oral argument is shown. The applicant has clearly and precisely constructed her arguments on appeal. No further explanation of the facts and issues need be made. The applicant's request for oral argument is, therefore, denied.

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 entered the United States as a K-1 fiancée on March 26, 1998. The petitioner married her United States citizen spouse on April 4, 1998 at San Francisco, California. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the final judgment of divorce became effective on November 16, 1999. On April 24, 2000, 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 United States citizen spouse during their marriage.

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

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

The petitioner claims that the Service official did not advise her that she could file a petition as an abused spouse when she appeared at the Service office in May 1999 to inquire about her adjustment interview and regarding her husband's threat of

deportation. The petitioner, however, has failed to establish that the Service official willfully failed to inform her that she could file for status as a battered spouse.

The petitioner's marriage to the alleged abuser legally ended through divorce prior to the filing of the self-petition. The petitioner, therefore, is ineligible for the benefit sought.

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.