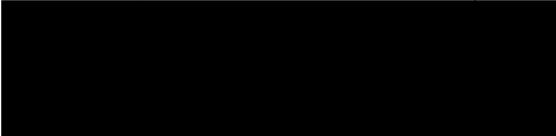




U.S. Department of Justice

Immigration and Naturalization Service

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



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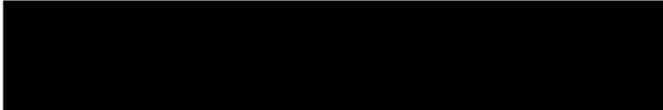
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FILE: [Redacted]
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Office: Vermont Service Center

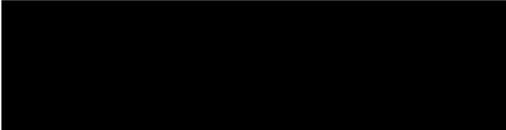
Date: NOV 27 2000

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:



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

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 Bulgaria 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 a person of good moral character; and (4) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner asserts that it is her belief that she has done whatever was in her power to prove that she married a United States citizen, that his two prior marriages have been dissolved, that she is a person of good moral character, and that her removal to Bulgaria would result in extreme hardship. She 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 record reflects that the petitioner last entered the United States as a visitor on March 3, 1997. The petitioner married her spouse on [REDACTED] at [REDACTED]. On September 28, 1998, 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 claimed U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(i)(B) provides 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. Further, 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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 director determined that the petitioner has failed to establish that her spouse is a citizen or lawful permanent resident of the United States, and also failed to establish that the two prior marriages of her spouse have been legally terminated, although she was requested on September 2, 1999 to submit this evidence.

On appeal, the petitioner asserts that it is her belief that she has done whatever was in her power to prove that she married a United States citizen, and that she included in the initial package her spouse's social security number, as well as phone numbers and names of friends and relatives of his. The petitioner states that her resources are extremely limited and do not allow her to make trips within the United States or pay somebody else to obtain

additional documentation, if such existed. The petitioner indicates that as to her spouse's previous marriages, she can only state what she knows to be absolutely true, that his first wife has remarried, and that she was shown the court papers stating that her spouse's marriage to his second wife had been dissolved.

However, no evidence was furnished on appeal to establish that the petitioner's spouse is a United States citizen or lawful permanent resident as statutorily required by sections 204(a)(1)(A)(iii) and 204(a)(1)(B)(ii) of the Act. Furthermore, the record does not contain evidence that her spouse's two prior marriages were legally terminated prior to their marriage. 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 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)(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 letters from three individuals furnished by the petitioner are insufficient 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 September 2, 1999.

On appeal, the petitioner submits a police clearance from Mount Pleasant, South Carolina, indicating that the petitioner has no criminal record with the agency. The petitioner, however, failed to submit a police clearance, criminal background check, or similar report issued by the appropriate authority in Bulgaria, the foreign country where she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition on September 28, 1998.

The petitioner has failed to overcome the director's finding 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.

The director reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. The director, however, determined that: (1) documentary evidence has not been submitted to indicate that the petitioner is currently involved in therapy, or that it is not available in Bulgaria; (2) documentary evidence has not been submitted to indicate that the petitioner's spouse would travel to Bulgaria in an attempt to harm her, nor does the record establish that Bulgaria's lack of support for domestic abuse victims is relevant to the petition; (3) while evidence furnished reflects that the petitioner earned a Master's degree and that she has been involved in classes at the College of South Carolina, the petitioner has indicated she was an applicant based on an international student's visa, and she does not require legal permanent resident status to pursue her educational aspirations; and (4) while the report by the State Department did indicate that women earn less than men in Bulgaria, given the petitioner's advanced degrees and work experience, it does not appear that she will be forced to accept a low-wage job.

On appeal, the petitioner asserts that she has submitted on prior occasions documentation detailing the situation, economic and otherwise, in Bulgaria. She claims:

Bulgaria does not have any means of coping with the consequences of domestic abuse. My only point is to emphasize the fact that if I were to return to Bulgaria, I could not get any support in that aspect, since I have already suffered domestic abuse in the United States. The sole reason for my not currently undergoing therapy or counseling is that I cannot afford either. I have no doubt, however, that, were I in a position to do so, I

would do everything in my power to get proper medical treatment and attention. It is true that [spouse] has not yet attempted to follow me to Bulgaria in order to harm me, but I think I would be justified in expecting the unexpected from a person who deliberately concealed his medical conditions....

The economic situation in Bulgaria at present is such that there can be no question of my choosing where to be employed. The unemployment rate is at its highest where young professionals with my education are concerned. No one is willing to pay adequate salaries to people with language and/or teaching skills.

The petitioner states that her mother, a United States citizen, and her sister, who is shortly to become one, are the only immediate family she has left. She further states that after her father's death they were brought even closer together, mostly because of the hardships they had to endure, and they depend on each other for comfort and support.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995).

Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Furthermore, there is no evidence to establish that the disruption of the petitioner's education would cause irreparable harm to her or that she would be unable to pursue or continue her education in Bulgaria. The fact that economic and educational opportunities are better in the United States than in the alien's homeland do not constitute extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977). It is noted that the director has indicated that based on the petitioner's claim that she is an applicant for an international student's visa, she does not require legal permanent resident status to pursue her educational aspirations in the United States.

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). There is no evidence that the petitioner would not receive support from her friends or relatives residing in Bulgaria. Further, the record contains insufficient evidence to establish that the petitioner would be unable to find employment, to pursue her occupation or comparable employment, or unable to continue her education upon her return to her native country. Nor has she established that her removal from the United States would

result in extreme hardship based on economic, political, and social problems in her country. Furthermore, it is noted that the record contains no evidence the petitioner is even employed in the United States.

While it is noted that the petitioner has sought psychological evaluation, she claims on appeal that she is not currently undergoing therapy or counseling because she cannot afford either. The petitioner has failed to establish that the petitioner has a medical or psychological condition that cannot be treated in the Bulgaria or that she is even presently receiving treatment and care for medical or psychological condition, the seriousness of the petitioner's health, whether her presence in the United States is vital to her medical and psychological needs, and that her medical and psychological needs cannot be met in Bulgaria.

While the petitioner states that her spouse could travel to Bulgaria and easily continue his abusive practices, the petitioner has not established that she would be unable to seek adequate protection from further abuse, and that the country conditions in Bulgaria will cause her extreme hardship. Furthermore, the likelihood that her spouse would travel to Bulgaria, his ability to locate the petitioner in her home country and whether the spouse is familiar with the foreign culture, language, locality, or that the spouse's family, friends or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the petitioner has not been established. Absent evidence to establish a realistic possibility of the citizen spouse locating the petitioner in the foreign country, or his ability to travel there carries little weight when determining extreme hardship.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

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.