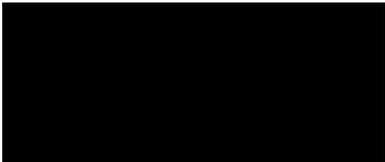




U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

B9

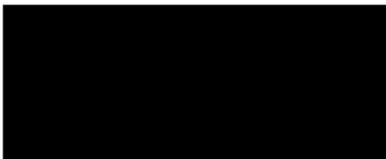
FILE: [Redacted]
EAC 00 004 51893

Office: Vermont Service Center

Date:

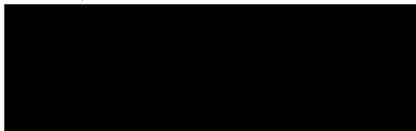
NOV 27 2000

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 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 case will be remanded to the director for further action.

The petitioner is a native and citizen of India 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; and (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. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner has met her burden as required by the statute. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent parts, 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 entered the United States as an F-1 student on June 14, 1997. The petitioner married her spouse on [REDACTED] of San Antonio, in Texas. On September 29, 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 permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) provides 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. The applicant claimed in the Form I-360 that her spouse was born in London. Because no evidence was furnished to establish her spouse's status in the United States, the petitioner was requested on December 6, 1999 to submit evidence of his status.

On appeal, counsel states that the director's request for evidence of status was responded on March 27, 2000, explicitly stating the alien registration number of the petitioner's spouse and indicating that he is a lawful permanent resident.

It is noted that the Service record reflects that the status of the petitioner's spouse was adjusted to that of a lawful permanent residence as an E-2 on March 13, 1995. The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that he 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 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 noted that the petitioner has furnished her own statement claiming that she and [REDACTED] were married on [REDACTED] and that she also furnished a letter from [REDACTED] which states that she and [REDACTED] were married according to Hindu rites. Because evidence furnished was insufficient to establish legal marriage, the petitioner was requested on December 6, 1999 to submit a marriage certificate which was issued by a civil authority. She was advised that in order for a marriage to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place.



On appeal, counsel submits a copy of a letter from the Hindu Temple of San Antonio certifying that the petitioner and [REDACTED] were married on August 15, 1997, and that the marriage has been performed according to Hindu rites. Also furnished is evidence that the marriage was filed and recorded by the County Clerk, Travis County, Texas, on October 3, 2000.

It appears that the petitioner may have overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G) based on the filing and recording of the petitioner's marriage in county court on October 3, 2000. However, the marriage was recorded more than one year after the petitioner and her spouse were separated, and it is not clear whether the petitioner and her spouse has since divorced.

The case will, therefore, be remanded in order that the director may determine the validity of the marriage certificate, whether the petitioner and her spouse are currently married, and in order that he may review the record of proceeding and determine whether the 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.