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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

[redacted] Public Copy

FILE: [redacted] EAC 99 173 53013 Office: Vermont Service Center Date: OCT 3 2000

IN RE: Petitioner: [redacted]
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:

[redacted]

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

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 appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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) has resided in the United States with the citizen or lawful permanent resident spouse; (2) is a person of good moral character; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the director's decision was made arbitrarily because all of the affidavits from family members and from a friend were not considered. Counsel 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 shows that the petitioner married her United States citizen spouse on September 16, 1994 at Tucson, Arizona. The petition, Form I-360, further shows that the petitioner last entered the United States without inspection on June 7, 1997. On May 17, 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.

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's sworn affidavit and her attorney's letter are insufficient evidence to establish good moral character. On appeal, counsel submits a letter of clearance from the Tucson Police Department and from the Pima County Sheriff's Department in Arizona indicating that they have no record of arrest or outstanding warrants against the petitioner.

The petitioner has, therefore, 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)(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 insufficient evidence to establish that she has met these requirements, she was requested on June 10,

1999 to submit additional evidence. The director listed examples of the evidence she may submit to show joint residence and good-faith marriage. No additional evidence was furnished. The director noted that the petitioner's sworn affidavit and the attorney's statement are insufficient to demonstrate her eligibility under these requirements.

On appeal, counsel asserts that there is no commingling of properties because the petitioner's spouse began abusing her one month after their marriage and he cared little of her well being. Counsel further asserts that the petitioner was not sophisticated enough at that time to keep evidence, and she did not anticipate her marriage would go wrong so that she needed to prepare for filing a self-petition.

He submits a sworn affidavit dated June 30, 2000 from the petitioner in which she states that she tried her best to collect supporting documents, but her mother from Mexico informed her that she could no longer find her pictures with her spouse. She further states:

> I personally visited my mother-in-law twice. At first she said that she would write an affidavit to confirm the relationship and the fact that I lived with [redacted] but later, she declined to do so because she sa[redacted]told her not to. My mother-in-law told me that she wanted to help me but did not want [redacted] to be mad at her. So, I could not get the affidavit from her;
>
> I do not have evidence like joint bank account and joint insurance policy, actually I never had anything from my husband after marriage because he was so abusive. As a matter of truth, he told me to file for divorce because he did not want to pay for the filing fee.

Counsel argues that the constant beating of the petitioner by her spouse only happened in cohabiting situations and was substantiated by affidavits of her family and friend. While counsel asserts that the director did not consider the affidavits furnished from family members and from a friend, these affidavits were not addressed by the director because no reference was made by the affiants regarding the petitioner's joint residence and good-faith marriage. Rather, these affidavits refer to cruelty perpetrated upon the petitioner by her spouse pursuant to 8 C.F.R. 204.2(c)(1)(i)(E). The director did not find that the evidence furnished by the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by her citizen spouse during the marriage, to be lacking.

The petitioner on appeal has failed to submit documentary evidence to establish that she has resided in the United States with her

U.S. citizen spouse and that she entered into the marriage to the citizen in good faith, and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(D) and (H).

Although not addressed by the director, the record of proceeding contains insufficient evidence to establish that the petitioner's removal from the United States would result in extreme hardship to herself or to her child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). However, since this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.