



U.S. Department of Justice
Immigration and Naturalization Service

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425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

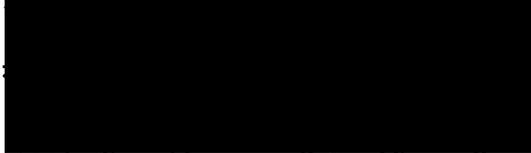


FILE: [Redacted]
SRC 98 111 51803

Office: Vermont Service Center

Date: SEP 13 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:



Public Copy

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.

Identifying numbers to prevent clearly unwarranted invasion of personal privacy

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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The petitioner is a native and citizen of Romania 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 denied the petition after determining that the petitioner failed to establish that she: (1) is a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(F); and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child pursuant to 8 C.F.R. 204.2(c)(1)(G).

Upon review of the evidence furnished on appeal, the Associate Commissioner determined that the petitioner has furnished sufficient evidence to establish that she is a person of good moral character. However, he concurred with the director's conclusion that the petitioner failed to establish that her removal from the United States would result in extreme hardship, and denied the petition on March 22, 2000.

On motion, the petitioner states that in July 1997 she willingly and officially changed her religion from Christian Orthodox to the Baptist faith, and that shortly thereafter, she realized that by changing her religion she unintentionally alienated herself from her family and friends in Romania, all of whom are Christian Orthodox. She claims that if forced to return to Romania as a Baptist, she will suffer persecution not only from the majority Orthodox community, but also even from relatives and members of her family who hold strong anti-Baptist attitudes. The petitioner submits additional evidence.

Pursuant to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

When used in the context of a motion to reopen in analogous legal disciplines, the terminology "new facts" or "new evidence" has been determined to be evidence that was previously unavailable during the prior proceedings. In removal hearings and other proceedings before the Board of Immigration Appeals, "[a] motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing...." 8 C.F.R. 3.2 (1999). In examining the authority of the Attorney General to deny a motion to reopen in

deportation proceedings, the Supreme Court has found that the appropriate analogy in criminal procedure would be a motion for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323 (1992); INS v. Abudu, 485 U.S. 94, 100 (1988).

On motion, the petitioner submits: (1) letters from friends and from her new church, and a certificate of baptism; (2) articles regarding Romania's policy on religious freedom, and reports on incidents against minority religious groups in Romania; and (3) a psychiatric report from [REDACTED] indicating that the petitioner came to his office on March 31, 2000 for psychiatric evaluation after being referred to him from another doctor because of recurrent emotional disturbances the petitioner has been experiencing for the past four years.

A review of this evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. 103.5(a)(2). The evidence submitted was previously available and could have been discovered or presented in the previous proceeding. Also, the petitioner's claim that if forced to return to Romania she will suffer persecution as a result of changing her religion from Christian Orthodox to Baptist, 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 failed to establish that she is likely to be the specific target of crime because of her religion. Nor has she established that she would be rejected, ostracized, or stigmatized by her family, friends, and the community because of her religion, as claimed, or that she would be shunned to the level of extreme hardship as envisioned by Congress. For these reasons, the motion may not be granted.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The motion is dismissed.