



U.S. Department of Justice

Immigration and Naturalization Service

R

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

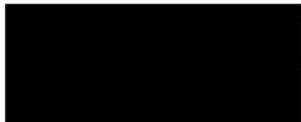


FILE: [Redacted]
EAC 98 095 53575

Office: Vermont Service Center

Date: JAN 21 2000

IN RE: Petitioner:
Beneficiary:



Public Copy

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

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 the Ukraine 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 is a person whose deportation (removal) would result in extreme hardship to herself. The director, therefore, denied the petition.

On appeal, counsel argues that the petitioner has met all the requirements for eligibility, including extreme hardship. He asserts that the only requirement not met by the petitioner's "extreme hardship" is a subjective standard that gives too much discretion and interpretation ability to the immigration officer reviewing the petition. 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 petition, Form I-360, shows that the petitioner arrived in the United States as a visitor on August 11, 1996. The petitioner married her United States citizen spouse on July 9, 1997 at Miami, Florida. On February 10, 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 U.S. citizen spouse during their marriage.

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, in his decision, reviewed and discussed all the evidence furnished by the petitioner, including the evidence furnished in response to the director's request for additional evidence on October 27, 1998. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to demonstrate that the petitioner qualifies under this requirement, the director denied the petition.

To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Further, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 240A of the Act. See Palmer

v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Mejia-Carillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981).

On appeal, counsel submits a fact sheet regarding violence against women, the 1998 Annual Report on Ukraine, the U.S. Department of State, Ukraine Country Report on Human Rights Practices for 1997, and the U.S. Department of State Background Notes on Ukraine dated June 1997. He states that although it would be helpful to have this information, they should not be determining factors in denying the petition based on the petitioner's dire situation and her proof that she has been battered and abused by her U.S. citizen spouse.

The petitioner states that she has become familiar with the social, medical and mental health services that are available here and are not accessible in the Ukraine; for instance, she has health insurance here that covers her physical ailments and she does not have to pay a lot of money to see very good doctors. She further states that in the Ukraine, she could not receive this type of treatment, the health services are practically non-existent and she could not be able to get help there. There is no evidence, however, to establish that the petitioner has a medical or psychological condition that cannot be treated in the Ukraine 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 the Ukraine. Neither the articles nor other documentary evidence furnished reflect that the petitioner would not be treated properly in her country due to economical condition and lack of medical facilities.

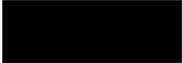
The petitioner states that her spouse is a very wealthy man and he has the financial ability to go to her country, and the local authorities do not like to get involved in domestic violence cases. There is no evidence, however, that the petitioner's spouse is harassing or even stalking the petitioner. It is noted that on June 15, 1999, the temporary injunction for protection against domestic violence was dismissed "based on the petitioner's testimony that he/she has not been threatened, intimidated, or harassed in any way to request that the injunction be dismissed and such has been done freely and voluntarily." Furthermore, while the ability of the citizen spouse to travel to the Ukraine is not debated, the likelihood that he would do so, his ability to locate the petitioner in the foreign country and whether the spouse is familiar with the foreign culture, native 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. It is noted that the petitioner had traveled to the Ukraine since the filing of the petition, without incident, and the record does not show evidence of a possible danger from her spouse. 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.

Further, the petitioner has not explained how the articles on violence against women in the Ukraine apply directly to her situation. Nor has she established any specific relationship between her return to the Ukraine and the manner in which the conditions there would affect her, whether living in a country where violence exists will subject her to such violence, and whether she would be humiliated, ostracized, or stigmatized because of her failed marriage, that she would bring shame to her family, or that she would be shunned to the level of extreme hardship as envisioned by Congress.

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 rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977). 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 to establish that the petitioner is not able to receive support from family members residing in the Ukraine. Further, while the petitioner claims that she would not be able to obtain employment in the Ukraine and that she would suffer irreparable harm if her education were disrupted, the record does not contain evidence that the petitioner is even employed in the United States or that she needs to continue employment if she were to return to the Ukraine. Nor is there evidence to indicate that the petitioner would be unable to pursue her occupation or comparable employment upon her return to her country. Further, the fact that economic and educational opportunities for the petitioner are better in the United States than in the alien's homeland does not establish extreme hardship. See Matter of Ige, supra. It is noted that the Country Report shows there are about 150 colleges and universities located in the Ukraine.

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. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). The petitioner has failed to establish that her 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.