



U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

PUBLIC COPY

FILE: [Redacted]
EAC 98 016 51982

Office: Vermont Service Center

Date: MAR 31 2000

IN RE: Petitioner:
Beneficiary:

[Redacted]

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. 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 granted and the previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Australia 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: (1) she is a person of good moral character; and (2) her deportation (removal) would result in extreme hardship to herself or to her child.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and dismissed the appeal on June 21, 1999.

On motion, counsel asserts that the petitioner's immigration attorney left the state without notifying the petitioner in advance, and it was not until July 16, 1999 that the petitioner's case was forwarded to her and she has now been retained as counsel for the petitioner. She submits additional evidence including evidence previously furnished.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character.

The Associate Commissioner noted that although the petitioner submits a letter of clearance from the [REDACTED] she failed to submit a self-affidavit attesting to her good moral character as required. He, therefore, determined that the petitioner has failed to establish that she is a person of good moral character. On appeal, counsel resubmits the letter of clearance from the [REDACTED] indicating that it has no criminal record of the petitioner. She also submits the petitioner's self-affidavit attesting to her good moral character. The petitioner, therefore, has overcome this finding of the director 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.

The Associate Commissioner reviewed the evidence furnished by the petitioner and concluded that the record contains no evidence that the petitioner's presence in the United States is vital to her medical needs and that her medical and psychiatric needs cannot be met in Australia; that the petitioner was in fact abused by her

family and that becoming effectively disavowed from her parent's lives precludes her from returning and reestablishing a life in her home country; and that she would be unable to find employment upon her return to her native country.

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.

On motion, the only new fact to be proved at the reopened proceedings to establish extreme hardship is the petitioner's self-affidavit and counsel's argument that if required to return to Australia, the petitioner will lose the protection of the courts and she will not be able to enforce or reinstate the restraining order against her ex-husband from Australia.

The petitioner, however, has not established that she would be unable to seek adequate protection from further abuse, and that the country conditions in Australia will cause her extreme hardship. Nor is there evidence that the petitioner's spouse is pursuing or stalking her in the United States. Furthermore, the likelihood that her spouse would travel to Australia, his ability to locate the petitioner in her home country and whether the spouse is familiar with the foreign 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, as claimed, 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.

All other arguments raised by counsel on motion has been addressed by the director and the Associate Commissioner. It is also noted that the statements made by the petitioner in her self-affidavit is a recapitulation of previous statements made by the petitioner, the psychiatrist, prior counsel, and other documentation contained in the record of proceeding. Furthermore, all other evidence furnished on motion were previously furnished by the petitioner and were addressed by the director and the Associate Commissioner in their decisions. Therefore, they will not be addressed in this proceeding.

The petitioner, on motion, has failed to establish that her removal would result in extreme hardship to herself pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). Accordingly, the previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated June 21, 1999, is affirmed.