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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] Office: Vermont Service Center Date: 13 SEP 2001
EAC 00 203 50780

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

Robert P. Wiemann, 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 appeal will be dismissed.

The petitioner is a native and citizen of 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: (1) is a person of good moral character; and (2) 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 petitioner is a person of good moral character and that she has provided sufficient proof of this to the Service in the manner required by law. He further asserts that the petitioner did enter into her marriage in good faith with the intention of establishing a life together with her spouse, and that she has provided sufficient proof of this to the Service in the manner required by law. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, 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 reflects that the petitioner entered the United States as a visitor on September 7, 1998. The petitioner married her United States citizen spouse on [redacted] at [redacted]. On June 29, 2000, 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.

PART I

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.

Because the record contained insufficient evidence to establish good moral character, the petitioner was requested on July 21, 2000 to: (1) submit police clearances from each locality in which she has resided for six or more months during the three-year period preceding the filing of the petition; (2) list all of her addresses for the previous three years, and the amount of time that she lived at each residence, to include the date that she moved in and the date she moved out of each residence. The petitioner was advised that the time frame, in her case, should cover the period from June 1997 to June 2000. The director denied the petition after determining that the evidence furnished in response to his request did not sufficiently satisfy the time frame mentioned since the petitioner came to this country in September 1998; nor did the petitioner sufficiently explain the unavailability of clearances or submit actual police-type clearances in the United States although it appeared that she had been living in New Jersey for more than six months.

On appeal, counsel asserts that the petitioner submitted her own affidavits attesting to her good moral character, as well as numerous affidavits from other individuals, including a police certificate from Ukraine. He states that the petitioner, however, did not submit local police clearances from any U.S. jurisdictions because, as of the time she filed her petition, she had not resided in any one municipality in the United States for six months or longer. Counsel submits clearances from Somerville, New Jersey, and from Manville, New Jersey, where he claimed the petitioner has resided for over six months.

The record shows several cities in New Jersey where the petitioner claimed to have resided, including Piscataway, Raritan, Belleville, and Union, New Jersey. The petitioner, however, failed to list all of her addresses for the three-year period immediately preceding the filing of the self petition, and the amount of time that she lived at each residence, to include the date that she moved in and the date she moved out of each residence, as had been requested by the director.

The petitioner has failed to submit evidence as had been requested to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

PART II

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.

The director noted that the record contained information showing that the petitioner knew Mr. [redacted] for three weeks before they were married and that the petitioner and Mr. [redacted] cohabited for roughly a month, the entire period to have occurred between December 1999 and January 2000. The director reviewed the evidence furnished by the petitioner, including evidence furnished in response to the director's requests for additional evidence on July 21, 2000. That discussion will not be repeated here. He noted, however, that although the record contained some information to show that the petitioner and her spouse appeared to have lived together, there was insufficient evidence to establish that her marriage was entered into in good faith.

Counsel, on appeal, asserts that the petitioner did enter into her marriage in good faith, with the intention of establishing a life together with her spouse. He further asserts that in spite of the short amount of time that the petitioner was able to cohabit with her spouse, the petitioner has submitted many of the types of evidence that are specified by Matter of Laureano, 19 I&N Dec. 1 (BIA 1983), and the supplementary information statement in the Federal Register accompanying the Service's regulations implementing the Violent Crime Control and Law Enforcement Act of

1994. Counsel submits documents previously furnished; a revised statement from [redacted] that the petitioner and her spouse lived in the back apartment of her 2-family house from November 1999 to January 2000; a copy of the petitioner's 1999 Federal Income Tax showing she is "married filing separate return;" another statement from Mr. & Mrs. [redacted] and a statement from [redacted] acquaintances of the petitioner and her spouse, in which they state that they have met the couple in December 2000 (sic), and that the couple visited them at their home.

While counsel asserts that the petitioner has provided sufficient proof that she entered into her marriage in good faith, the evidence provided was evaluated and discussed by the director in his decision. He determined that while this evidence shows that the petitioner and her spouse appeared to live together, there was insufficient evidence to establish that her marriage was entered into in good faith. Further, the 1999 income tax and the statements from the petitioner's landlord and from her acquaintances, furnished on appeal, confirm that the petitioner and her spouse had previously resided together. This evidence, however, failed to establish good-faith marriage.

It is concluded that the petitioner has failed to establish that she entered into the marriage to the U.S. citizen in good faith and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

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.