U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

B9

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

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Vermont Service Center Date: JAN 14 2003
EAC 01 172 50914

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]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, 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 sustained.

The petitioner is a native and citizen of Vietnam 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 entered into the marriage to the U.S. citizen in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner's marriage to the U.S. citizen spouse was not entered into for the purpose of evading the immigration laws. Counsel further asserts that there is substantial evidence in the file to prove that the petitioner was subjected to extreme cruelty and abused by Mr. [redacted] during their marriage, and that it is clear in the record that the petitioner entered the marriage in good faith and made every attempt possible to preserve the marriage. However, in order to save her life, the petitioner had to leave the man she fell in love with, only to be left with shattered dreams and very little hope for her future.

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 November 18, 1998. The petitioner married her United States citizen spouse on May 28, 1999 at Cherry Hill, New Jersey. On April 25, 2001, 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)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director reviewed the evidence furnished to establish the existence of a good-faith marriage. He noted that although the petitioner furnished a copy of a Form I-130 (Petition for Alien Relative) and copies of tax returns, the I-130 does not show that it was ever receipted by a Service office or that it was ever filed in the petitioner's behalf, and that the tax returns indicate that the petitioner's spouse filed the taxes jointly with his ex-wife. The director further noted that based on his request for additional evidence on May 29, 2001, the petitioner furnished a self-affidavit, affidavits from two friends, a police clearance report, and transcripts from court appearances dealing with the issue of domestic violence committed by her spouse. However, the petitioner did not submit any evidence to prove that she married her spouse in good faith.

On appeal, counsel asserts that the petitioner entered into the qualifying marriage in good faith. She has established this through her affidavit and proof of existence of her married life through presentation of joint health insurance documents, photographs, joint credit card account summary, police reports, court reports about the relationship, and affidavits from people with personal knowledge of the marriage.

The petitioner's Service "A" file, included with the record of proceeding, contains (1) the Form I-485, application for adjustment of status, and (2) the Form I-130 petition, filed by Mr. [redacted] on behalf of the petitioner on June 23, 1999, with fee, at the Newark

Service office. The file contained a copy of The Executive Corporate Card account summary reflecting that Mr. [redacted] and the petitioner have a joint credit card account with this company. Also contained in the record of proceeding is a copy of AmeriHealth "Detail Enrollment Roster as of: 09/15/00" which shows that the petitioner is covered under Mr. [redacted] health insurance. While the director noted that copies of the tax returns are not considered as evidence because they indicate that Mr. [redacted] filed the taxes jointly with his ex-wife, it is noted that these 1997 and 1998 joint tax returns are attachments to Form I-864 (affidavit of support) furnished by Mr. [redacted] upon filing of Form I-485 and Form I-130 on behalf of the petitioner.

These documents, in conjunction with other documentary evidence contained in the record of proceeding, including the petitioner's self-affidavit, affidavits from her friends, photographs, and the court reports addressing the relationship, are sufficient evidence to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome the director's finding 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 met that burden. As the director did not raise any other basis for denial, the appeal will be sustained.

ORDER: The appeal is sustained.