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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

B9

Identifying data deleted to prevent clearly unwarranted invasion of personal

[redacted]

FILE: [redacted] EAC 02 183 51684 Office: Vermont Service Center Date: NOV 0 3 2003

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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 never been arrested or convicted of any crimes. Counsel further asserts that the director erred in denying the petition based on the assertion that the petitioner did not enter the marriage in good faith. She states that the petitioner provided ample evidence demonstrating her good-faith intent. 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 entered the United States without inspection in 1995. The petitioner married her United States citizen spouse on June 27, 2001 at Montebello, California. On May 4, 2002, 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.

The director determined that the petitioner failed to submit any evidence of her good moral character although she was requested

on October 15, 2002 to submit additional evidence. On appeal, the petitioner submits a statement indicating that she is a person of good moral character, and that she has never been arrested in the United States or anywhere in the world. She also submits a letter of clearance from the Sheriff's Department, County of Los Angeles, and from the Police Department, Montebello California, indicating that the petitioner has no criminal record or outstanding warrants.

The petitioner has, therefore, overcome this finding of the director, 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 reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on October 15, 2002. He noted that the photographs furnished would serve to show that the petitioner and her spouse were at the same place at the same time. He maintained that the Schedule 1, Current Income of Individual Debtor(s) for [redacted] lists the petitioner as his spouse, and that documents provided shows that the petitioner and Mr. [redacted] shared a common residence. Because the record did not contain satisfactory evidence to establish the existence of a good-faith marriage, the director denied the petition.

On appeal, counsel asserts that the petitioner's inability to provide the Service with joint assets, accounts, or co-mingling of funds was not due to her unwillingness to do so, or her lack of good faith in entering the marriage, but rather, because Mr. Silva did not allow such things, and that he is a very possessive and controlling man.

Counsel submits a hand-written note in Spanish, with English translation, from [redacted] stating that she witnessed the marriage of her mother (the petitioner) and Mr. [redacted], she has known Mr. [redacted] since 1998, they reunite as a family on various occasions, and that Mr. [redacted] was like a grandfather to her children. Counsel also submits a hand-written note in Spanish,

with English translation, from [redacted] stating that she is a friend of Mr. [redacted] and the petitioner, she has known them since 1999, they would get together on weekends, and on some occasions they would go to Las Vegas, Nevada, to have fun.

The notes or statements from [redacted] and [redacted] however, without supporting documentary evidence, are insufficient to establish that the petitioner and Mr. Silva entered into the marriage in good-faith. Furthermore, they are not sworn statements made under oath before an officer or a notary.

While evidence in the record establishes that the petitioner and her spouse had resided together pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), the petitioner, however, failed to establish that she entered into the marriage to the U.S. citizen in good faith 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.