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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: AUG 22 2003
EAC 02 280 53836

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: Self-represented

PUBLIC COPY

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 (AAO) on appeal. The case will be remanded to the director for further action.

The petitioner is a native and citizen of Romania 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 eligibility for the benefit sought because she was divorced from her allegedly abusive U.S. citizen spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the petitioner asserts that this is not the first petition she submitted to the Service. She states that in early 1997, she submitted a petition to the Chicago Service office, she was interviewed by an officer of the Service, she was asked to surrender her conditional "green card" with the promise of a new unconditional card to be sent to her by mail. However, because a few months had passed and she had not received any decision by the Service, she checked on the status of her case and she was told that it was pending/in process. In January of 1998, she again went to the Service office to report a change of address and to check on the status of her case, and she was told it was still pending. The petitioner states that in 1999, she again checked on the status, and she was shocked to know that her case was closed.

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 record reflects that the petitioner married her United States citizen spouse on October 6, 1994 in Romania. The petitioner arrived in the United States on May 22, 1995 as a CR-1 (conditional resident). The petitioner subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on February 13, 1996. On September 9, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who had been battered by, or had been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

The record of proceeding contains a copy of a Divorce Judgement issued on February 13, 1996, by the Circuit Court of Cook County, Illinois, ordering that the marriage between the petitioner and [redacted] be dissolved. The director, therefore, determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse for more than two years prior to the filing of the self-petition on September 9, 2002. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing of the Form I-360 self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse. *Id.* section 1503(b), 114 Stat. at 1520-21.

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and her citizen spouse were divorced on February 13, 1996, and the petitioner filed the instant petition on September 9, 2002, more than two years after the divorce was final. The director is correct in his conclusion.

The record, however, contains Form I-751 (Petition to Remove the Conditions on Residence) filed by the petitioner on March 10, 1997. The petitioner furnished documentation as evidence that she had been the subject of extreme cruelty perpetrated by her citizen spouse. As noted by the petitioner on appeal, the record reflects that the petitioner appeared for a Service interview regarding this case on April 9, 1997, and that she subsequently furnished documentation, as had been requested by the interviewing officer, to establish extreme cruelty. There is no evidence in the record that a decision has been made on the Form I-751.

Accordingly, the case will be remanded so that the director may review the record of proceeding and the Form I-751 petition, and to determine the qualification of the petitioner under 8 C.F.R. § 216.5(e)(3). The director shall enter a decision regarding the Form I-751.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion.