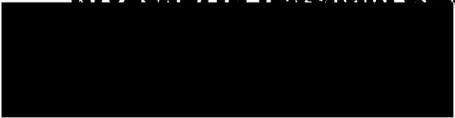


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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invasion of personal privacy



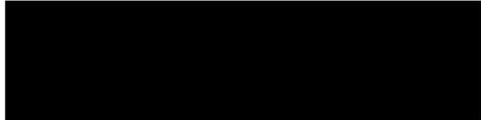
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: 
EAC 02 137 51747

Office: Vermont Service Center

Date: AUG 28 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:



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

The petitioner is a native and citizen of the Dominican Republic 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 is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner responded to the director's request and had included, with all the requested information, an original police clearance under the petitioner's maiden name. She submits a copy of the requested 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 record reflects that the petitioner entered the United States with a K-1 fiancée visa on January 29, 2000. The petitioner married her United States citizen spouse within the required ninety-day period, on April 23, 2000 at Windham, Connecticut. On May 14, 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.

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 three-year period immediately preceding the filing of the self petition.

The director noted that it appears from the police clearance, furnished by the petitioner, that the search of records by the Police Department, Storrs, Connecticut, was done by "name only," under her married name of [REDACTED]. The petitioner was, therefore, requested on August 7, 2002, to submit a police clearance or all police records pertaining to her maiden name, [REDACTED] (note that the petitioner's maiden name is [REDACTED]). The director denied the petition after noting that the petitioner did not address this request in her response.

As argued by counsel, the record of proceeding contains the original criminal record check under the petitioner's maiden name.

This record check, however, is not valid as it does not reflect the name of the local or state police that issued the clearance, and there is no seal or stamp by the police and/or telephone number of the police report for verification. Based on handwritten notations made on the record check, it appears the director was aware of these issues. The petitioner, however, was not informed of the problem with the report but, rather, the director denied the petition because the petitioner failed to submit new police clearances under her maiden name or other aliases.

Furthermore, it is noted in the director's request for additional evidence on August 7, 2002 and in his decision dated January 27, 2003, that the petitioner was not advised of evidence she may submit to establish good moral character under 8 C.F.R. § 204.2(c)(2)(v), including a request for criminal background check or similar report issued by the appropriate authority in the Dominican Republic, the foreign country where the petitioner resided for six or more months during the three-year period immediately preceding the filing of the self petition.

Accordingly, the case will be remanded so that the director may accord the petitioner an opportunity to submit additional evidence to establish good moral character. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review, and without fee.

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