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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: SEP 25 2003
EAC 02 077 53850

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]

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 Citizenship and Immigration Services (CIS) 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 Peru 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 citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel contends that the director's assertion that the petitioner did not uphold her burden in proving that she and her ex-husband had entered into a marriage in good faith was not correct. She states that the petitioner did not marry Mr. so that she could have a way of immigrating to the United States. Rather, she married him because she had true feelings for him. Counsel asserts that the petitioner may not be able to produce a love letter or an email that Mr. sent her expressing his feelings for her; however, she did submit evidence to show that the petitioner had been a victim of abuse. She further asserts that Mr. about his marriage to the petitioner, that in Family Court in Las Vegas, Mr. was able to annul the marriage because he said that he did not know the petitioner was without status in the United States.

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 as a visitor on March 20, 1991. The petitioner married her United States citizen spouse on October 18, 2001 at Las Vegas, Nevada. On December 31, 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.

Because the petitioner furnished no evidence to establish that she married her citizen spouse in good faith, she was requested on April 10, 2002 to submit additional evidence. The director listed examples of the evidence she may submit to show the existence of a good-faith marriage. The director noted that in response, the petitioner furnished photos of her wedding ceremony. The director maintained that these photos do not bear enough weight, alone, to determine that she and her spouse married in good faith. He further noted that there was no other evidence submitted to indicate that she married her spouse in good faith.

Counsel, on appeal, submits a billing statement and a letter from I.C.C. Services regarding outstanding preparation and processing fees, addressed to the petitioner and her spouse. While these documents and other documents in the record establish that the petitioner and her spouse had resided together, they are

insufficient to establish good-faith marriage. Furthermore, although the director listed examples of evidence the petitioner may submit to show the existence of a good-faith marriage, the petitioner did not submit an explanation as to why such documentation is unavailable.

The petitioner has 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.