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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

Identifying data deleted to
prevent unwarranted
invasion of privacy



FILE: [Redacted]
EAC 01 241 50792

Office: Vermont Service Center

Date: SEP 28 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PUBLIC COPY

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

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner appealed the decision of the AAO. A motion to reopen, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, however, will be treated as a motion to reopen, pursuant to 8 C.F.R. § 103.5(a)(8). Accordingly, the motion will be granted, the previous decision of the AAO will be withdrawn, and the petition will be approved.

The petitioner is a native and citizen of El Salvador 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 denied the petition after determining that the petitioner failed to establish that she: (1) is a person of good moral character, pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); and (2) entered into the marriage to the citizen or lawful permanent resident in good faith, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

Upon review of the record of proceeding, the AAO concurred with the director's conclusions and dismissed the appeal on July 25, 2002.

On motion, the petitioner submits a Good Conduct Certificate, based on the petitioner's fingerprints, indicating that a criminal history search of the records of the New York Police Department shows no record of the petitioner. The petitioner has, therefore, overcome this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

Additionally, on motion, the petitioner submits a self-statement; several pieces of correspondence addressed to the petitioner and her spouse (Gustavo), reflecting that they share the same address; copies of airline tickets to Canada issued on July 17, 1998 to the petitioner and Gustavo, and photographs taken during their trip to Canada; and several other photographs of the petitioner and Gustavo taken during 1996 and 1997.

The evidence furnished on motion, in conjunction with other documentary evidence contained in the record of proceeding, is sufficient evidence to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome this finding of the director, 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 decision of the AAO dated July 25, 2002 is withdrawn. The petition is approved.