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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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date:

FEB 24 2004

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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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.

Cindy M. Gomez for
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 Guatemala 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 eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A) based on that relationship; 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 entered into the marriage in good faith. He 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 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 May 13, 2000. The record contains the petitioner's marriage certificate reflecting that she married her citizen spouse on August 30, 2001 at Oklahoma City, Oklahoma. On March 25, 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)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. § 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. Additionally, 8 C.F.R. § 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The director determined that the petitioner failed to submit evidence of the legal termination of the prior marriages of Mr. [redacted] (petitioner's spouse) as had been requested. On appeal, counsel submits a copy of a divorce decree as proof that the prior marriage of [redacted] to his first spouse terminated on July 3, 1990, and a copy of a divorce decree as proof that the prior marriage of [redacted] to his second spouse terminated on April 14, 1999. The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B).

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 the evidence furnished and determined that it was insufficient to establish that the petitioner married Mr. Keener in good faith. He maintained that the mere fact that the petitioner and Mr. Keener have a bank account together did not establish the existence of a good-faith marriage. Additionally, the seven affidavits furnished only attested to the fact that the authors knew that the petitioner married Mr. Keener, and they knew where she resided.

On appeal, counsel submits photographs of jewelry, identifying two pieces as the engagement ring and wedding band, that he states were given to the petitioner by [redacted] He also submits copies of two photographs claimed to have been taken on the wedding day, and two other photographs of the petitioner and [redacted] claimed to have been taken prior to their marriage. The photographs do not serve to establish that the marriage was entered in good faith. It was not disputed that the petitioner and [redacted] married. The two other photographs submitted appear to show that the petitioner and [redacted] were in the same place at the same time; however, they did not clearly establish that the marriage was bona fide.

Counsel submits affidavits from six individuals claiming to be friends of the petitioner, including revised affidavits from [redacted] (who previously furnished a statement under the name of [redacted], and [redacted] (who previously furnished a statement under the name of [redacted]

The director, in his decision, maintained that all the affidavits submitted (including affidavits from [redacted] and [redacted] only attest to the fact that the authors knew that the petitioner married [redacted] and they knew where she resided; therefore, the evidence was not sufficient to determine that the petitioner married her spouse in good faith.

In a statement dated April 9, 2003, [redacted] states that she met [redacted] two years ago, and that she later met the petitioner at the hospital where the petitioner and [redacted] both work. [redacted] states, "Later I ran into them at a restaurant; I was very surprised to see that [redacted] were dating...They seem to be very happy and in love." [redacted] further states that she later met the couple at their house and she noticed that the petitioner was sad but neither she nor the petitioner said anything to each other. She indicates that on December 24, 2002, she saw the petitioner at a gasoline station, and when she asked her how her relationship was going, the petitioner answered, "fine." She further indicates that months later, she again saw the petitioner, and that the petitioner told her that she and [redacted] were separated. [redacted] however, did not indicate the date she visited the couple at their house, and the circumstances surrounding her visit. Further, while [redacted] indicates that she saw the petitioner on December 24, 2002, and the petitioner advised her that her relationship with Mr. Keener was "fine," the record reflects that the petitioner and Mr. Keener were separated since November 30, 2001, and subsequently divorced in February 2002.

While [redacted] claims knowledge of the petitioner's relationship with [redacted] she indicates that she was told by the petitioner that she and [redacted] have a happy relationship. It appears that this knowledge was based primarily on what the petitioner told her; thus, the statements are essentially an extension of the petitioner's personal testimony rather than independent corroboration of that testimony.

The revised affidavits from [redacted] from [redacted] from Ms. [redacted] and from [redacted] now indicate that the petitioner and [redacted] loved each other and had a happy relationship. The affiants raise questions of credibility when asserting a substantially revised claim to eligibility on appeal. Only after the application was denied did the affiants indicate that the petitioner married in good faith. Further, no documentary evidence was furnished to support this new claim.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i).

The affidavits furnished, without supporting documentary evidence, are insufficient to establish the existence of a good-faith

marriage. Furthermore, while these affidavits and other documents in the record establish that the petitioner and her spouse may have resided together as provided in 8 C.F.R. § 204.2(c)(1)(i)(D), the petitioner has failed to establish that she entered into the marriage to the citizen spouse in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

It is also noted that counsel, on appeal, acknowledges that her office received a letter from the petitioner's spouse, in which he enclosed several "fake" identifications of the petitioner, and that he sent this same letter to the "INS" because he is only interested in hurting the petitioner. Counsel states, however, that "IIRAIRA § 348, 96 act.036 (May 5, 1997), reprinted in 74 Int. Rel. 795 (May 12, 1997)," prohibits Service officers from making adverse determinations on admissibility or deportability "using information furnished solely by" the petitioner's abuser, an abusive member of the petitioner's household, or someone who has abused the petitioner's child. The record contains four Forms I-551, Resident Alien cards (A093189370; A041851774 - same file number, two different names; and A093522801) and four Social Security cards issued to different individuals. The photographs on the four I-551 cards appear to be the same individual.

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.