U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 01 165 50776

JUN 09 2004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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]

prevent clearly unwarranted invasion of

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The director denied the petition, finding that the petitioner had failed to establish that she is a person of good moral character. The director's decision was appealed to the Administrative Appeals Office (AAO). In a decision dated August 15, 2002, the AAO remanded the case to the director. The AAO is reopening this proceeding on its own motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) for the purpose of remanding the case to the director. The AAO's decision dated August 15, 2002 will be withdrawn because it erroneously stated that the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character during the three-year period immediately preceding the filing of the petition. In fact, the regulation merely requires that the petitioner establish that she is a person of good moral character. The AAO's decision dated August 15, 2002 was in error to the extent that it remanded the case to the director for the purpose of allowing the petitioner to submit an application for a waiver of grounds of inadmissibility. There is no requirement that Citizenship and Immigration Services (CIS) consider an application for a waiver of grounds of inadmissibility simultaneously with adjudicating a visa petition.

The petitioner is a native and citizen of England 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 citizen of the United States. The record of proceeding contains evidence that the petitioner was placed in exclusion proceedings on July 30, 1992 and that the proceedings were terminated on January 20, 1993.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> 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;
>
> * * *

> (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; [and]
>
> * * *
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

On the Form I-360, the petitioner indicated that she entered the United States as a nonimmigrant visitor in May 1982. The petitioner married her United States citizen spouse on June 5, 1992 at Los Angeles, California. [1] On April 2, 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 citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in pertinent part:

> *Good moral character.* 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 from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition.

Because the record contained insufficient evidence that the petitioner is a person of good moral character, on May 21, 2001, the director requested that the petitioner submit additional evidence of the petitioner's good moral character. The director indicated that she should submit her own affidavit supported by police clearances or records from each place she resided for at least six months during the 3-year period before filing the petition. The director stated that if the police clearance is researched by name only, she must supply the law enforcement agency with all aliases she has used, including maiden name, if applicable.[2] In response to the request for additional evidence, the petitioner indicated that she was submitting a clearance letter from the Los Angeles Police Department and another clearance from Sacramento was forthcoming. In his decision,

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[1] The evidence on the record indicates that the petitioner wed the same citizen spouse twice, first on November 25, 1987 and again on June 5, 1992.

[2] It is noted that the search was conducted under one name only, even though the petitioner has also used her maiden nam[redacted] a married name [redacted] and an alias, [redacted]

the director noted that they did not find the Los Angeles Police Department clearance in her reply and that he had not received a clearance from Sacramento. On appeal, the petitioner submitted a clearance from the Los Angeles County Sheriff's Department dated March 11, 2002, that states that a "name search only" was performed on and that no record with their department was found for the last three years. The clearance indicated that the petitioner had been arrested by the Los Angeles Police Department on December 25, 1995 for inflicting corporal injury on her spouse.

The record of proceeding contains the records of the Municipal Court of Los Angeles, Van Nuys Judicial District, Los Angeles County, California (Court docket No reflecting that the petitioner was arrested on December 25, 1995, and charged with the offense of inflicting corporal injury on spouse, in violation of California Penal Code 273.5(A). On December 27, 1995, the petitioner entered a plea of nolo contendere to the charge and the court found the petitioner guilty of the crime. Imposition of the sentence was suspended and the petitioner was placed on probation for a period of 36 months, with the condition that she serve three days in the country jail, pay a $200 fine, pay $100 in restitution, complete a 12-month domestic violence program and attend 52 Alcoholics Anonymous (AA) meetings (two a week). According to the evidence on the record, the petitioner violated probation on three occasions, but she completed probation.

On appeal, the petitioner submits a statement explaining the circumstances surrounding the December 25, 1995 arrest as had been requested. The petitioner failed to submit a self-affidavit attesting to her good moral character.

On October 28, 2000, the President signed into law an amendment to the *Violence Against Women Act*. This amendment allows an alien to file a self-petition, despite an arrest and/or conviction, if the criminal act constitutes a ground of inadmissibility that is waivable, and the act was connected to domestic violence. In review, the petitioner has established that her December 1995 arrest and conviction is a criminal act that constitutes a ground of inadmissibility that is waivable and the act was connected to domestic violence.

The record of proceeding contains the following evidence relating to the issue of good moral character:

- A letter of recommendation from a library media teacher.
- A Los Angeles County Sheriff's clearance.
- The records of the Municipal Court of Los Angeles, Van Nuys Judicial District, Los Angeles County, California (Court docket No. reflecting that the petitioner was arrested on December 25, 1995, and charged with the offense of inflicting corporal injury on spouse, in violation of California Penal Code 273.5(A).
- The records of the Municipal Court of Los Angeles, Van Nuys Judicial District, Los Angeles County, California (Court docket No reflecting that the petitioner violated the conditions of her probation on three occasions.

- The petitioner's explanation of the circumstances surrounding her 1995 arrest and conviction for spousal abuse.

- A police incident report dated January 29, 2001, indicating that the petitioner threw a knife at her 12-year old son, Matthew.

- A letter dated February 28, 2001, addressed "to whom it may concern" from Eileen Cinque of the Los Angles County Department of Children and Family Services that provides:

> The Department of Family and Children's Services has investigated two Suspected Child Abuse Reports since January of 2001 concerning various allegations of Physical Abuse, Sexual Abuse, Emotional Abuse and General Neglect. After extensive investigation we have concluded that it is in the best interest of [the petitioner's children] to be in the full care, custody and control of their father, Paul Bohorquez and that full custody by [sic] granted to him by the Family Law Court.

This case will be remanded to the director with instructions to request that the petitioner provide an affidavit to establish good moral character and addressing the police incident report dated January 29, 2001, her probation violations, and the allegations of child abuse and neglect of the Los Angeles County Department of Children and Family Services. The director should request the petitioner to provide the outcome of any proceedings conducted on child abuse and neglect by any state agency, as applicable. Because the case will be reopened to consider these incidents, the petitioner should be instructed by the director to provide a police clearance or a criminal background check from the Los Angeles Police Department or the State of California in all names she has used, including [redacted] The police clearance or criminal background check should not be limited to a three-year period. The director shall enter a new decision on the Form I-360 petition, which, if adverse to the petitioner, is to be certified to the AAO, for review and without a fee.

It is noted that the record contains evidence that the petitioner is infected with HIV (Human Immunodeficiency Virus). If this petition is approved, the petitioner would be required to seek a waiver of inadmissibility at the time of seeking adjustment of status.

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