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U.S. Citizenship and Immigration Services

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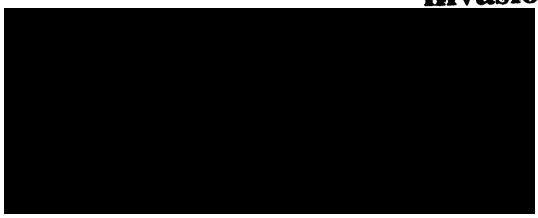

B9

MAY 25 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 240 51856

IN RE: Petitioner: [redacted]
Beneficiary:

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:

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.

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 31-year old 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 record reflects that the petitioner wed the citizen spouse on February 14, 1995. The petitioner's citizen spouse initially filed a Form I-130 petition for Alien Relative on January 21, 1997. After an interview conducted in accordance with procedures established by *Stokes v. INS*, No. 74 Civ. 1022 (SDNY Nov. 10, 1976), the district director denied the Form I-130 petition on December 9, 1999 due to discrepancies in the sworn testimony between the petitioner and the citizen spouse. That denial was upheld on September 6, 2000 by the Board of Immigration Appeals.

On the Form I-360 petition, the petitioner indicated that she entered the United States on January 17, 1992. The petitioner was placed into removal proceedings on or about June 6, 2001. Citizenship and Immigration Services (CIS) records reflect that the petitioner was ordered removed in absentia on October 26, 2001.

On July 12, 2002, the petitioner filed a Form I-360 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.

The director denied the petition, finding that the petitioner failed to establish that she was a person of good moral character, in that she has been engaged in prostitution during the past ten years as described in Sections 212(a)(2)(D) of the Act, 8 U.S.C. § 1182(a)(2)(D) and 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3).

On appeal, counsel for the petitioner asserts that CIS denied the instant petition because a waiver of grounds of excludability has not been granted.

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 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.

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

Because the record contains information that the petitioner was arrested and charged with prostitution on seven occasions, and convicted on November 21, 1995, she was requested on February 12, 2003, in a Notice of Intent to Deny, to submit a copy of all arrests and court documents to show the final disposition of each arrest and a list of all aliases she had used in the past ten years. In response, the petitioner submitted her criminal record from the New York Police Department, which indicates she was convicted upon a plea of guilty for the charge of prostitution on nine separate occasions between July 20, 1995 and December 19, 2000. The petitioner also submitted a copy of an Application for Waiver of Grounds of Excludability (Form I-601), which she attempted to file with the Vermont Service Center. The director retuned the Form I-601 to the petitioner with instructions to file at a local office or immigration court considering her application for adjustment of status or at an American Consulate or Embassy considering her application for an immigrant visa. The director determined that because the petitioner had failed to establish that her convictions had been overturned or that a waiver of the pertinent ground of excludability had been granted, she had not overcome the grounds for denial.

The petitioner submitted copies of arrest and court records from New York, New York. The evidence on the record indicates that the petitioner was arrested and charged with prostitution on April 17, 1995, July 20, 1995, November 21, 1995, March 26, 1996, May 20, 1996, May 24, 1996 October 16, 1996, January 21, 2000 and December 19, 2000. The evidence indicates that the petitioner was convicted upon a guilty plea for each charge. [1]

[1] Criminal Court Queens Docket numbers 95Q018730, 95Q033730, 95Q051620, 96Q012703, 96Q021265, 96Q043220, 2000QN062468; New York Criminal Court Docket numbers 96N051448, and 2000NY007010.

On appeal, counsel argues that because the Form I-601 waiver application has not been adjudicated, his client will never be able to take advantage of a remedy available under the law. Counsel's argument is misplaced and ignores the fact that the petitioner must establish that she is a person of 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 admissibility or deportability that is waivable, and the act was connected to domestic violence. The petitioner did not allege that her arrests and convictions were connected to domestic violence. In review, the petitioner has failed to establish that she is a person of good moral character. *See* Sections 212(a)(2)(D) and 101(f)(3) of the Act.

Beyond the decision of the director, the petitioner failed to establish that she entered into the marriage to the citizen in good faith. For this additional reason, the petition may not be approved.

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.