

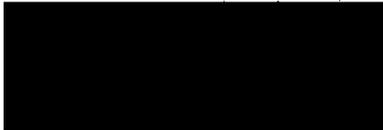


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FILE: [Redacted]  
EAC 01 045 50756

Office: Vermont Service Center

Date: DEC 19 2001

IN RE: Petitioner: [Redacted]  
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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
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 Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Mexico 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 U.S. citizen in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the director erred in finding that the petitioner had not provided adequate evidence to establish that she entered into the marriage to her U.S. citizen spouse in good faith.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, 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 petition, Form I-360, shows that the petitioner arrived in the United States during June 1991. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on September 6, 1995 at Dallas, Texas. On November 24, 2000, 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 the 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.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's requests for additional evidence on January 11, 2001. He noted that the lease agreement, listing [REDACTED] (petitioner's spouse) as a resident, shows his relationship to the primary renter as a friend; the affidavit from a friend states only that the affiant attended the wedding and was later told the petitioner was experiencing problems with her spouse; and the invitation for the petitioner's wedding shows the date of the wedding was Saturday, September 9, 1995, although the marriage certificate shows that the petitioner was married on September 6, 1995.

On appeal, counsel submits two "love notes" from the petitioner's spouse to the petitioner while in courtship; money orders for payment of the lease showing the names of both the petitioner and her spouse and the address where they both reside; and a medical record of the petitioner and her spouse. Counsel asserts that the petitioner did not benefit when she decided to marry her abusive spouse; she did not marry for any pecuniary, immigration, or other gain; she was in love with him, and there was never or has there ever been any evil or negative intent to this marriage. Counsel states that the petitioner's spouse was listed as "friend" on the lease agreement as they had not yet been married when he moved in with the petitioner and her daughter and sister. He further states that the affidavits of [REDACTED] (the petitioner's sister) and [REDACTED] (friend) both declare that there was a relationship as husband and wife between the petitioner and her spouse. Counsel states that one of the issues the Service declares as a negative factor and a reason of the denial, is that the petitioner decided to have the wedding party on Saturday, September 9, 1995. He asserts that the petitioner was married on Wednesday, September 6, 1995, but she wanted a party on Saturday, as logic would find more people would attend a wedding party on Saturday as on a Wednesday; therefore, it is not clear why this was a reason to deny the application.

Counsel indicates that the Service stated in the decision that the photo submitted by the petitioner was not sufficient evidence of a "good faith marriage," and at the same time the Service declared the photo to be sufficient to show a historical record of the relationship. The Service states: "The photos are not sufficient to establish a good faith marriage as they do show a historical record of the relationship." Counsel asserts that if the photos demonstrate a historical record of the relationship, then this point should prove, along with the rest of the evidence, the existence of a good faith marriage.

The documents contained in the record of proceeding, including documents furnished by counsel on appeal and his explanations to the discrepancies cited by the director in his decision, appear credible and sufficient to establish that the petitioner entered into the marriage to the U.S. 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 appeal is sustained, and the petition is approved.