

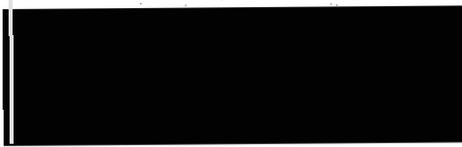


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U.S. Department of Justice

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 00 092 52958

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:  
[Redacted]

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 dismissed.

The petitioner is a 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 director determined that the petitioner failed to establish that she 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 Service: (1) failed to consider additional reliable and persuasive secondary evidence submitted on behalf of the petitioner; (2) failed to properly consider the weight of the evidence submitted; and (3) erroneously interpreted the purpose for which the evidence was submitted.

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 claimed to have entered the United States without inspection in October 1996. The petitioner married her United States citizen spouse on May 15, 1997 at Jersey City, New Jersey. On February 17, 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 their 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 in the record regarding interviews conducted by the district office based on the visa petition filed in her behalf by her U.S. citizen spouse. The Service noted that the visa petition was denied based on the lack of knowledge the petitioner and her spouse displayed about each other, and that the secondary evidence submitted was insufficient in light of the inconsistent answers both the petitioner and her spouse presented when questioned about their marital relationship. The director noted that the evidence submitted by the petitioner in support of the Form I-360 self-petition was the same evidence which the district office rejected as insufficient to establish that the petitioner entered the marriage in good faith.

The petitioner was, therefore, requested on March 28, 2000 (Notice of Action) to submit additional documentation. The director listed examples of documents the petitioner may submit to show the existence of a good-faith marriage. The director noted that these were not submitted, nor did the petitioner submit an explanation as to why such documentation was unavailable. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service failed to consider the affidavits of [REDACTED] and [REDACTED] when rendering the decision. The director, however, discussed these two affidavits in his Notice of Action dated March 28, 2000. He found discrepancies between the petitioner's marriage license, the petitioner's statement in the March 1991 interview, the March 1999 statement of the petitioner's spouse, the affidavit of Ms. [REDACTED], and the affidavit of Ms. [REDACTED]. The director,

therefore, requested that the petitioner provide an explanation for these discrepancies. He noted in his decision that no response to this request was received by the Service.

Counsel further asserts on appeal that the Service failed to consider that the rebuttal furnished was intended to rebut specific findings by the Service and answer questions raised in the Service denial. The director, however, noted that the rebuttal statement and the petitioner's affidavit are inconsistent with each other, and that the file still did not contain sufficiently reliable secondary evidence to support the petitioner's claim that she married her citizen spouse in good faith.

Further, while counsel states on appeal that the Service failed to consider the medical report that the petitioner receives treatment as a result of the abuse, the director did not find extreme cruelty, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E), to be lacking in this case.

On appeal, the petitioner has failed to overcome the director's finding 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 not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.