U.S. Department of Justice

Immigration and Naturalization Service

B9

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JAN 3 2001
EAC 00 163 52805

IN RE: Petitioner: [redacted]
Beneficiary:

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)

Public Copy
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

Mary C. Mulrean, Acting 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 Canada 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 he: (1) is a person of good moral character; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner feels the Service erred in not acknowledging the fact that he is a person of good moral character and that his removal from the United States would not be an extreme hardship to himself and his parents.

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 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 as a visitor on October 25, 1995. The petitioner married his United States citizen spouse on January 16, 1996 at [redacted] Oregon. On May 9, 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, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he 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.

The director determined that the petitioner failed to establish that he is a person of good moral character based on his arrests and/or convictions for violations of restraining order, probation violations, and assault since August 1995. The director noted that the petitioner stated in a statement that he "violated the terms of probation, it was because of having consumed illegal substances." The director indicated that "a transcript of your probation violation hearing dated November 19, 1997, contained in your permanent record, described multiple, positive drug tests. You admitted to methamphetamine usage, and other documents in the record added positive findings of THC."

The director noted that the initial arrest record furnished by the petitioner listed "arrest #5/08-12-98/Probation Violation-Assault IV/convicted," and that although the petitioner was requested to submit information regarding each of his arrests, including the one cited, no documentation about this arrest was provided with his response. The director further noted that the petitioner "have had difficulties with the law for some five years; you have been on probation, something of a test of behavior, and that probation has been violated. The August 1998 assault incident was not even acknowledged by you, let alone explained."

On appeal, counsel asserts that the petitioner was in fact convicted of Assault IV on November 19, 1997 and placed on probation. He states that at the time of the conviction, the petitioner had no idea that the conviction would affect his immigration to the United States at a later date, and had he known of such a fact, he would have contested the assault charge in view of the fact that he feels that the incident with [redacted] (the petitioner's spouse) was a mutual altercation. Counsel further asserts that the subsequent violations of the conditions of probation were as a result of the actions of [redacted] and in view of the fact that the petitioner still loved her, he acquiesced to her wishes and got himself in the position of being held in contempt of violation of a restraining order. He states that the petitioner contends that the Circuit Court Judge's notations concerning the credibility of [redacted] and the ultimate dismissal of the restraining order, proved that the petitioner was not a person of bad moral character.

Counsel further states that the remaining probation violations deal with use of illegal substances. He indicates that the petitioner admits his implication with controlled substances, but that he has successfully taken a drug evaluation and treatment program and has been drug free for over two years. Counsel asserts that the petitioner is not under probation from any court at this time, he has paid his debt to society, he successfully defeated a spurious domestic violence charge, and is currently a law-abiding tax payer.

Pursuant to 8 C.F.R. 204.2(c)(1)(vii), a self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act, 8 U.S.C. 1101(f).

Section 101(f) of the Act, 8 U.S.C. 1101(f), states, in pertinent part:

> For the purposes of this Act--No person shall be regarded as, or found to be, a person of good moral character who, during the period of which good moral character is required to be established, is, or was--
>
> * * *
>
> (3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period....

> The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or....
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects that the petitioner was conviction on August 18, 1995 of assault; convicted on June 22, 1997 of contempt of court for violating a restraining order; convicted on November 17, 1997 of probation violation; on April 8, 1997 and June 11, 1997, urinalysis specimens tested positive for controlled substances. These violations may render the petitioner inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II). However, while the petitioner was convicted more than three years of the required period to establish good moral character, the petitioner on appeal (filed on September 20, 2000) admits his implication with controlled substances and claims to have been drug free for over two years. Further, as provided in section 101(f) of the Act, the fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

The director determined that the petitioner has failed to establish that he is a person of good moral character. Further, while the director noted that the petitioner neither acknowledged nor explained his August 1998 arrest, the petitioner, on appeal, again failed to submit new evidence or explain this arrest.

Accordingly, it is concluded that the petitioner has failed to establish that he is a person of good moral character and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that his removal would result in extreme hardship to himself or to his child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director reviewed and discussed the evidence furnished by the petitioner to establish extreme hardship. The discussion will not be repeated here. He noted, however, that the petitioner has not submitted evidence to establish the unavailability of sufficient health care in Canada as claimed; he has not established that he had an ongoing profession and would be unable to obtain employment in Canada; or that the absence of his family would sufficiently constitute an extreme hardship.

On appeal, counsel asserts that the petitioner is currently in treatment for depression and anxiety. He further asserts that the petitioner has indicated to the Service on his previous affidavits that he would be unable to obtain the proper care, treatment, and counseling in Canada due to his long absence and his inability to have a continuance of his therapy with a therapist whom he trusts and believes is doing a good job toward his rehabilitation.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). The loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977). As noted by the director, the petitioner has not established that he has an ongoing profession and would be unable to obtain employment in Canada. Nor is there evidence to indicate that the petitioner would be unable to pursue his occupation or comparable employment upon his return to Canada.

Further, while it is noted that the petitioner has sought psychiatric evaluation, there is no evidence to establish that the petitioner has a medical or psychological condition that cannot be treated in Canada or that he is even presently receiving treatment and care for medical or psychological condition, the seriousness of the petitioner's health, whether his presence in the United States

is vital to his medical and psychological needs, and that his medical and psychological needs cannot be met in Canada as claimed. Further, the record does not establish that comparable counseling services are unavailable in Canada or that a change of counselors would have a great psychological impact on the petitioner. The fact that the petitioner would have to start all over with another psychiatrist does not rise to the level of extreme hardship as contemplated by Congress.

Emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). Further, while counsel on appeal states that the petitioner's removal from the United States would be an extreme hardship also to his parents, as provided in 8 C.F.R. 204.2(c)(1)(viii), hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's removal would cause extreme hardship.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to himself or to his child. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

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.