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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



Public Copy

JUN 8 2001

FILE: [Redacted]
SRC 99 140 51353

Office: Vermont Service Center

Date:

IN RE: Petitioner:
Beneficiary:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: Self-represented

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, 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 Honduras who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to submit evidence as had been requested to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, the applicant submits additional documents and states that she will provide within 30 days the documents previously requested by the director. However, it has been approximately seven months since the filing of the appeal in this matter, and neither a brief nor additional evidence has been received in the record of proceeding. Therefore, the record is considered complete.

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 record reflects that the petitioner entered the United States without inspection on or about March 2, 1989. The petitioner married her lawful permanent resident spouse on [REDACTED] at [REDACTED]. On September 30, 1999, 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 lawful permanent resident spouse during their marriage.

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 battery on December 29, 1994, she was requested on April 20, 2000, in a notice of intent to deny, to submit (1) a statement explaining the circumstances surrounding the arrest, (2) a copy of the full police report concerning the arrest, and (3) court documents to show the final disposition of the charge and any punishment or fine she may have received. The petitioner was advised that she may also submit additional evidence of good moral character. Examples of evidence the petitioner may submit to establish good moral character under 8 C.F.R. 204.2(c)(2)(v) was listed by the director in his request for additional evidence. Because she failed to comply, the director denied the petition.

On appeal, the applicant submits a copy of the arrest report indicating that she was arrested on December 29, 1994, and charged with battery (domestic violence). The petitioner's spouse was



named as the victim. The applicant, however, failed to submit the court's final disposition of this charge and a statement explaining the circumstances surrounding the arrest as had been requested. Nor did the petitioner submit a self-affidavit attesting to her good moral character pursuant to 8 C.F.R. 204.2(c)(2)(v).

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

On [REDACTED] 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.

This decision, therefore, is without prejudice to the filing of a new self-petition, to be adjudicated in accordance with the new law now in effect.

ORDER: The appeal is dismissed.