



B9

U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



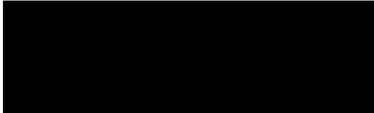
02 AUG 2002

FILE: [Redacted]
EAC 01 141 53588

Office: Vermont Service Center

Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal
privacy.

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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 the Philippines 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: (1) is the spouse of a citizen or lawful permanent resident of the United States; and (2) is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service's denial of the petition is erroneous because the petition was filed prior to the termination of the petitioner's marriage. She further asserts that the petitioner is a person of good moral character.

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 record reflects that the petitioner entered the United States with a K-1 fiancée visa on July 27, 1999. The petitioner married her United States citizen spouse within the required ninety-day period, on September 4, 1999 at San Bernardino, California. On March 26, 2001, 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.

PART I

8 C.F.R. 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioner must be legally married to the abuser when the petition is properly filed with the Service.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse on March 19, 2001, prior to the filing of the self-petition on March 26, 2001.

On appeal, the petitioner submits a copy of the order of the Superior Court of California, County of Riverside, ordering that the judgment of dissolution of the marriage between the petitioner and [REDACTED] be entered on July 5, 2001. The record, therefore, reflects that the petitioner was still married to Mr. [REDACTED] when the self-petition was filed.

The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

PART II

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character.

The director determined that the record did not contain documentation to establish that the petitioner is a person of good moral character.

On appeal, counsel asserts that the petitioner previously submitted documentation as to her good moral character in the form of her own affidavit, supported by police clearances from each place she resided at least six months during the three-year period prior to the filing of the petition. Counsel submits a criminal record check by the State of California, Department of Justice, dated December 12, 2001, indicating that a search of the petitioner's fingerprints reveals no criminal history record in their files. She also submits letters from the Cathedral City Police Department, California, dated September 7, 2001, and from the City of Palm Springs Police Department, California, indicating that they have searched the criminal files of their department and no record of arrest was found.

The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

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.