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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted]
EAC 01 235 50521

Office: Vermont Service Center

Date: 15 AUG 2011

IN RE: Petitioner:
Beneficiary:



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

Public Copy

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 Iran 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 establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; (2) is a person of good moral character; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner submits additional evidence.

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 in August 1984. However, her current immigration status or how she entered the United States was not shown. The petitioner married her lawful permanent resident spouse on April 1, 1999 at Sacramento, California. On July 23, 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 spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with her lawful permanent resident spouse. Additionally, 8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage in good faith.

Because the petitioner furnished insufficient evidence to establish that she has met these requirements, she was requested on September 13, 2001, to submit additional evidence. The director listed examples of the evidence she may submit to show joint residence and good-faith marriage. The petitioner, in response, failed to submit evidence to establish that she had resided with her spouse and that she married him in good faith. The director, therefore, denied the petition.

On appeal, the petitioner states that she resided with her spouse in Chesterfield, Missouri, from December 1998 to June 1999, at which time, due to the abuse, she left Chesterfield. She submits: (1) a copy of her Missouri driver's license reflecting her address as [REDACTED] (2) a copy of a postmarked envelope addressed to the petitioner at Fox Springs Drive; (3) a postmarked envelope addressed to the petitioner's spouse at [REDACTED] (4) and copies of telephone bills from three relatives to establish that they made phone calls to the petitioner and her spouse in Missouri.

The petitioner, on appeal, states that she was in love with her spouse when she married him and she entered into the marriage believing she would live with him the rest of her life, that she would have children with him, and that he would be the love of her life; unfortunately, her dreams were shattered by his abuse. The petitioner further states that she has a lot of evidence showing that both she and her spouse entered into the marriage in good

faith, with the full knowledge and participation of both sides of their family members. She submits: (1) photographs of their December 1998 engagement party and "temporary wedding vows" attended by the parents, families, and friends of the petitioner and her spouse; (2) photographs of the petitioner in her wedding gown, and the day of their "permanent wedding;" (3) a VHS tape of the wedding ceremony, wedding reception, and the opening of wedding gifts on April 1, 1999; and (4) affidavits from several families and friends who attended the temporary wedding vows, the permanent wedding ceremony, and the reception.

The evidence furnished by the petitioner to establish that she resided in the United States with her spouse and that she entered into the marriage in good faith appears credible. The petitioner has, therefore, overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(D) and (H).

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

Because the petitioner furnished no evidence to establish good moral character, she was requested on September 13, 2001, to submit additional evidence. On appeal, the petitioner submits a letter of clearance from the San Jose Police Department, California, indicating that the petitioner has no criminal record in their jurisdiction.

The petitioner has overcome the director's finding 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.