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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



FILE: [Redacted]
EAC 01 124 54766

Office: Vermont Service Center

Date: DEC 26 2002

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:



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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, and the previous decision of the Associate Commissioner will be affirmed.

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 denied the petition after determining that the petitioner failed to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; (2) 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; (3) is a person of good moral character; and (4) entered into the marriage to the citizen or lawful permanent resident in good faith.

Upon review of the record of proceeding, the Associate Commissioner determined that the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal, that she failed to support her claim that there was an abuse of discretion and infringement of her due process rights, and that she failed to submit a brief or additional evidence within 30 days as stated on appeal. The Associate Commissioner, therefore, summarily dismissed the appeal on July 8, 2002.

On motion, counsel submits a certified mail receipt indicating that additional evidence was mailed to the Service subsequent to the appeal, on January 25, 2002, and prior to the decision of the Associate Commissioner. He also submits a police clearance and the petitioner's supplemental statement dated January 23, 2002.

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 entered the United States without inspection in 1990. The petitioner married her United States citizen spouse on April 7, 1995 at New York, New York. On March 21, 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)(D) requires the petitioner to establish that she has resided in the United States with her U.S. citizen spouse.

Because the petitioner furnished insufficient evidence to establish that she met this requirement, she was requested on May 16, 2001, to submit evidence that she and her spouse resided together. The director listed examples of the evidence she may submit to show joint residence. The director reviewed the evidence furnished in response to his request. That discussion will not be repeated

here. He noted, however, that in light of the discrepancy in the petitioner's affidavit regarding joint residence two months after meeting her spouse in 1994, and the absence of reliable secondary evidence, the address label and subscription notice furnished by the petitioner are insufficient to demonstrate that she had resided with her spouse.

On motion, the petitioner states that she wrote in her affidavit, in Spanish, that "after two months of knowing each other, we started sexual relationships." She further stated that in Spanish when they use the phrase "we began to live together," they mean "to start sexual relationships." She states that she believes that the translation by the notary public is not correct. The petitioner explains that she and [REDACTED] began having a sexual relationship prior to their marriage while she was living at [REDACTED]. At that time, he kept his [REDACTED] and it was after they were married on April 7, 1995, that [REDACTED] permanently moved to her address.

Based on the explanation of the petitioner, the address label and subscription notice under the names of the petitioner and her spouse, the Form I-130 alien relative petition filed on behalf of the petitioner by [REDACTED] on March 29, 1996, the petitioner's Form G-325A (Biographical Information) and [REDACTED] Form G-325A, all reflecting the same address for the petitioner and [REDACTED] during the marriage, it is concluded that the petitioner and her spouse previously resided together.

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

PART II

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

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence,



including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she met this requirement, she was requested on May 16, 2001 to submit additional evidence. The director listed examples of evidence she may submit to establish extreme cruelty. The director reviewed and discussed all the evidence furnished, including

evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. He noted, however, that the petitioner's statement describes general threats and harassment by her spouse, but that the statement lacks details regarding the nature of the relationship and the specific instances of abuse. The director also noted that [REDACTED] related that the petitioner obtained a protection order with the help of her landlord, and that the landlord had her spouse evicted from the residence. The file, however, does not contain a statement from the landlord in support of this claim. The director noted that according to the Temporary Protection Order and the petitioner's statements at the August 8, 1997 interview, the petitioner and her spouse were not residing together at the time of the harassing phone calls. Therefore, the subsequent eviction of her spouse, as described by Ms. [REDACTED] appears to be inconsistent with the information the petitioner provided to the court and to the Service office.

On motion, the petitioner states that she has been the victim of domestic abuse by her spouse. She explains that she appeared for her adjustment interview without her husband, and, when answering why her husband was not present, she reported to the officer "that my spouse was behaving with anger and violence against me." She states that the officer "only remarked to me that why did I arrive there, and why did not I have a lawyer?" The petitioner states that she "replied that I attended to the appointment because I believe that I should have some rights because I was mistreated by my husband US Citizen. The Officer asked me to leave."

The record of proceeding is devoid of evidence to corroborate these claims by the petitioner. The Service record shows that during an interview on August 18, 1997, the petitioner appeared without her husband. She stated that she planned to divorce him and that they were no longer living together.

The petitioner further states, on motion, that she believes there is no contradiction between what she said to her social worker and what she said to the INS. She further states that she did not submit a statement from her previous landlord, who advised and psychologically helped her to obtain a protection order, because "I could not find him anymore. I lack of knowledge where my previous landlord moved, or if he sold the building or not."

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The record reflects that the claim of qualifying abuse was evaluated by the director after a review of the evidence contained in the record of proceeding. He concluded that in light of the inconsistencies in the record and in the

absence of credible evidence to substantiate the petitioner's claim, it was the finding of the Service that the petitioner had not demonstrated her qualification under this requirement. The petitioner's explanation of the inconsistencies noted by the director is not persuasive. The record contains insufficient evidence to establish that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." The petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

PART III

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.

The director determined that the record does not contain evidence of the petitioner's good moral character, although she was requested on May 16, 2001, to submit additional evidence. On motion, the petitioner states that she is a person of good moral character. She submits a Good Conduct Certificate from the New York Police Department indicating that a criminal history search of the records of the Department indicates it has no record of the petitioner.

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

PART IV

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 the evidence furnished by the petitioner, including evidence furnished in response to the director's requests for additional evidence on May 16, 2001. He noted that the photographs of her wedding day, and receipts which appear to reflect purchases made for a marital residence, are insufficient to support a finding that the petitioner entered into the marriage with her spouse in good faith. The director further noted that the petitioner did not provide documentation regarding her divorce proceedings as requested.

On motion, the petitioner states that her spouse took all their household papers and documents, with malice, in order to harm her further. She further states that in her "Hispanic culture, spouses like to have separate properties of their assets." The petitioner explains that she candidly and honestly submitted the receipts in good faith. She obtained the duplicate receipts from the stores since she had lost the originals. The store clerks provided the duplicate receipts with her present address, because her spouse had taken away all documents and papers from their home. The petitioner asserts that she was planning to divorce her husband. However, at that time, if she had tried to look for and approach her husband, asking about divorce, he would become aggressive and could hit her. Also, at that time, she felt very depressed, her financial situation was very bad, and she could not afford to pay expenses and fees for divorce proceedings.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). While documents furnished by the petitioner establish that she and her spouse appear to have resided together, no additional evidence was furnished by the petitioner, on motion, to establish that she entered into the marriage to the U.S. citizen in good faith.

The petitioner has failed to overcome this finding of the director 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 previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated July 8, 2002, is affirmed.