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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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: 25 JUL 2002
EAC 00 278 51338

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)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

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

Helen E. Crawford for

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 dismissed.

The petitioner is a native and citizen of Peru 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 is a person of good moral character. The director, therefore, denied the petition.

On appeal, the petitioner expresses her remorse for "doing such a stupid thing" by changing her date of birth on her documents. She states that her date of birth is December 10, 1958; however, she followed the advice of her husband to change her birth date because he did not want his family to know the difference in their ages. Her husband told her that nothing bad will happen to her and that it is "not a big deal just a number." She further states that she worried because it is her record, but that "he said don't worried just follow and do as I said. Today he knows and he'll be so happy to find out it went against me after all that's what he wants and deserve for me."

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 as a visitor on July 7, 1989. The petitioner married her United States citizen spouse on June 23, 1998 at West Palm Beach, Florida. On September 16, 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, her U.S. citizen 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.

The director determined that the petitioner failed to establish good moral character because:

(1) the letter from the Palm Beach County Sheriff's Office indicates the search had been done for [redacted] by name only, and the sheriff's office did not indicate that they were aware of prior names and aliases she may have used.

(2) the original birth certificate of the petitioner appears to have been altered and, therefore, it was not considered sufficiently reliable evidence to establish her birth date; additionally, the Service received the petitioner's sworn affidavit in which she stated that she was born on December 10, 1963, and that any other date is an error.

(3) Section 101(f) of the Act provides that a person is not of good moral character if he or she has given false testimony for the purpose of obtaining immigration benefits. It appears that the petitioner had filed several applications and petitions using different birth dates, and it appears that she had submitted altered documents to support these applications and petitions.

On appeal, the petitioner submits two letters of clearance from the Palm Beach County Sheriff's Office for [redacted] and [redacted] other names used by the petitioner. While the petitioner, on appeal, admits that her correct date of birth is December 10, 1958, both letters of clearance of the petitioner's aliases reflect the date of birth as December 10, 1963. Additionally, the letter of clearance, previously furnished under the name of [redacted] also reflects the date of birth of December 10, 1963. It is noted that the Sheriff's Office indicated: "Due to the possibility of more than one individual having or having used the same name, this search could reflect the record of an individual other than the person you are inquiring about. This response is based on name check ONLY with the Palm Beach County Sheriff's Office and these results have not been verified by fingerprints. The record may also be inconclusive...."

Furthermore, while the age of a self-petitioning battered spouse may be irrelevant, as determined by the director, the petitioner in this case has given false testimony for the purpose of obtaining immigration benefits by filing several applications and petitions using different birth dates and appears that she had submitted altered documents to support these applications and petitions.

Accordingly, it is concluded that the petitioner has failed to establish that she is a person of good moral character and to overcome the director's findings 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.