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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 99 118 50452

Office: Vermont Service Center

Date: 09 MAY 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: Self-represented

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was 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 The motion will be granted, the previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is a native and citizen of Lithuania 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 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; (2) is a person of good moral character; and (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child.

The Associate Commissioner noted that section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. He determined that the petitioner, therefore, had overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). The Associate Commissioner, however, concurred with the director's conclusion that the petitioner had not established that she: (1) 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; and (2) is a person of good moral character. He dismissed the appeal on October 15, 2001.

On motion, the petitioner states that it is her opinion that despite her best efforts to find qualified representation for her case, she feels that she was taken advantage of by all of the attorneys who have represented her. She submits additional evidence to establish that she has been battered by or has been the subject of extreme cruelty, and that she is a person of good moral character.

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 petitioner submits a police report and a letter from the City of New York Police Department advising that the petitioner was the victim of a crime which occurred in Brooklyn, New York, on December 7, 1998; that during the commission of the robbery and assault, the petitioner's purse was forcibly removed and she received injuries to her back and arm; that on December 9, 1998, the perpetrator of the crime, the petitioner's husband, was arrested and charged with the robbery and assault of his wife; that at arraignment for this arrest, the petitioner was granted a full Order of Protection against her husband; and that the subject of this arrest (the petitioner's spouse) had prior arrests and he has been arrested (subsequent to the arrest for robbery and assault against his wife) on an assortment of charges, including drug related, burglary, and larceny.

The petitioner submits copies of police reports and the order of protection. She also submits a letter from [REDACTED] a friend of the petitioner, stating that she was a witness of an incident when the petitioner's spouse had beaten the petitioner on the street; however, the petitioner did not report this incident to the police because her husband promised to beat her if she makes a report. Also submitted are letters from [REDACTED] and [REDACTED] stating that the petitioner is under their care and is suffering from hypertension, anxiety, and depression. Dr. Bentsianov states that since 1998, the petitioner's condition has worsen and she is on medication and constant medical supervision.

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Based on this evidence, including evidence previously furnished by the petitioner, it is concluded that the petitioner has furnished sufficient and credible evidence to establish that she was the subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

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



On motion, the petitioner states that she has never broken any laws or violated any immigration regulations, and that she is always a person of good moral character. She submits a Good Conduct Certificate, based on the petitioner's fingerprints, indicating that a criminal history search of the records of the New York Police Department shows no record of the petitioner. The petitioner has, therefore, 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 petition will be approved.

**ORDER:** The decision of the Associate Commissioner dated October 15, 2001, is withdrawn. The petition is approved.