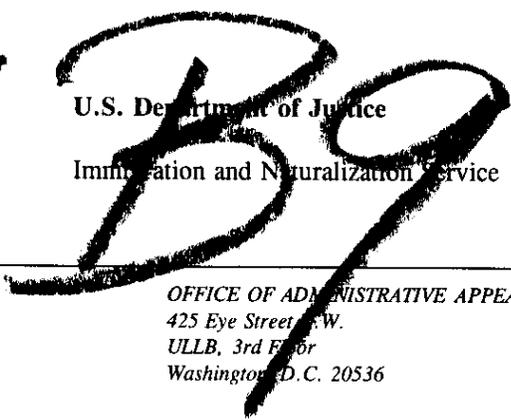




U.S. Department of Justice
Immigration and Naturalization Service



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

09 MAY 2002

FILE: [Redacted]
EAC 01 075 53411

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: 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
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 Austria 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 a person of good moral character; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that she and her spouse intensely loved each other, that she entered into the marriage in good faith, and that she is a person of good moral character. She 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 record reflects that the petitioner entered the United States as a J-1 exchange visitor on November 10, 1998. The petitioner married her United States citizen spouse on July 20, 2000 at Boston, Massachusetts. On January 4, 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)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director determined that based on the evidence furnished, including evidence furnished in response to his request for additional evidence on April 7, 2001, it can not be ascertained that the petitioner entered into a good-faith marriage.

On appeal, the petitioner states that she entered the marriage in good faith, that she and [REDACTED] (the petitioner's spouse) went to marriage counseling to solve marital problems, and that she gave up her position at the [REDACTED] in Boston and moved to [REDACTED] with [REDACTED] with the intent to start a family. The petitioner submits correspondence through e-mail between Charles and the petitioner, letters from two friends, from the petitioner's sister, and from [REDACTED] the petitioner's psychologist.

The e-mail messages between the petitioner and Charles, written on August 11, 2000, on August 12, 2000, and on August 15, 2000, show expressions of their love for each other, the problems encountered during the marriage, and the possibility of reuniting. [REDACTED] states in her letter that the petitioner had requested assistance with marital therapy; that [REDACTED] accompanied the petitioner to her office on several occasions; that it was clear the couple cared for each other and wished to make the relationship work; that they finally decided to move to [REDACTED] with hopes that the change would help their marriage; that while the couple did make substantial efforts towards change, it soon became clear that they could not reconcile; and that the emotional distress was a major impediment to both of their lives. The letters from two friends



and colleague of the petitioner indicate their close relationship to the petitioner and their personal knowledge of the relationship of the petitioner and [REDACTED] and that the petitioner's reason for getting married was based on their genuine affection for each other.

The petitioner's sister states that in many conversations with the petitioner and with [REDACTED] she could tell that he was as much in love with the petitioner as she was with [REDACTED] and that they behaved and sounded like any newlywed couple. A few weeks into the marriage, the petitioner told her very reluctantly that things were not going so well in the relationship. The sister suggested the petitioner should leave [REDACTED] and come live with her in [REDACTED] but the petitioner refused and decided to stay in order to work things out with the help of her psychologist whom she was seeing due to depression.

The documentation furnished on appeal, in conjunction with other documentary evidence contained in the record of proceeding, appear credible and sufficient to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

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. 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 although the petitioner submits a police clearance from the Commonwealth of Massachusetts, she failed to submit clearances from two other locations where she had resided for a period of six months or more.

On appeal, the petitioner submits an e-mail from the [REDACTED] [REDACTED] thanking the petitioner for using American DataBank's online research system and indicating that a criminal record search

was made on [REDACTED] from the Court of [REDACTED] Statewide as well as the Courts of Washington Statewide and [REDACTED] Statewide, and that no felony or misdemeanor was found in the jurisdiction searched.

The [REDACTED] e-mail, however, is not acceptable evidence of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), the petitioner's affidavit should be accompanied by a local police clearance or a state-issued criminal background check. The e-mail, however, indicates that the search was made from the courts. It is also noted that in the director's request for additional evidence on April 7, 2001, the petitioner was advised that if police clearances are researched by "name only," she must supply the law enforcement agency with all aliases she had used, including maiden name, if applicable. The petitioner failed to submit a local police clearance or a state-issued criminal background check under her maiden name and also under her married name from the State of [REDACTED] and State of [REDACTED].

The petitioner has failed to 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.