



BM

U.S. Department of Justice
Immigration and Naturalization Service

identifying data deleted
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 01 102 53583

Office: Vermont Service Center

Date: **NOV - 6 2002**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Kyrgyzstan 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) has resided in the United States with her U.S. citizen spouse; (2) has been battered by, or has been the subject of extreme cruelty perpetrated by, the U.S. citizen spouse 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 U.S. citizen spouse during the marriage; (3) is a person of good moral character; and (4) entered into the marriage to the U.S. citizen spouse in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner and her spouse resided together in the Kyrgyz Republic, in India, and in the United States. He states that they were together when the petitioner initially entered the United States as his fiancée on a K-1 visa, and that she lived with her husband when she entered the United States as a conditional permanent resident. Counsel further asserts that the petitioner has been the subject of extreme cruelty and that she is a person of good moral character. He 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 last entered the United States as a conditional permanent resident (CR-1) on June 9, 2000. The petitioner married her United States citizen spouse on October 9, 1999, in Kyrgyzstan. On February 9, 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.

Counsel, on appeal, asserts that the petitioner and her spouse resided together in the Kyrgyz Republic, in India, and in the United States. He presented no evidence to corroborate his statement that the petitioner had resided with her U.S. citizen husband in the U.S.

The petitioner has failed to 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.

* * *

(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.

On appeal, counsel submits a letter from Connie Mercer, Home Front Executive Director, dated April 25, 2002, stating that although the organization usually does not help individuals without children, they were struck by the petitioner's obvious distress and agreed to help with the housing search for the petitioner. He also submits

[REDACTED]

a letter from a domestic violence counselor for Womanspace, dated May 21, 2002, stating that she received the petitioner's phone call on June 12, 2000, when she was screened in as eligible for their services, and that during their conversation, the petitioner narrated several ongoing experiences of being the victim of sexual abuse, criminal mischief, and harassment. Counsel also submits a psychological evaluation from Dr. Frank Donnangelo, Licensed Professional Counselor, dated May 7, 2002, indicating that the petitioner was the subject of extreme mental cruelty perpetrated by [REDACTED] (the petitioner's spouse).

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.**

The petitioner claims that she was abused by her spouse during her stay in the United States subsequent to the issuance of a fiancee visa on January 16, 1999, and that an "argument [between the petitioner and [REDACTED] ensued which eventually led me leaving for Kyrgyzstan." The petitioner and [REDACTED] were married in Kyrgyzstan on October 9, 1999. The petitioner states that [REDACTED] returned to the United States within one week of the marriage to prepare her immigration documents, and she immigrated to the United States with a CR-1 visa on June 9, 2000. A few hours after her arrival in the United States, she was arrested for "commit assault by purposely, knowingly or recklessly causing bodily injury to [REDACTED] specifically by slapping him in the face with her hand causing an observed injury to the right side of his face." The petitioner was confined to prison for two days as a result of this arrest.

In his evaluation, Dr. Donnangelo stated that the petitioner "protested against the demands that he was making of her. In response, he locked her in a room. She felt like a prisoner. Later that evening, Mr. [REDACTED] called the police and told them that she was trying to kill herself. When the police arrived, he let her out of the room. She was so hurt, confused, and angered by his behavior that she slapped him across the face, at which point the police arrested her for assault. She was clearly the victim of extreme mental cruelty perpetrated against her by Mr. [REDACTED]

The evaluation by Dr. Donnangelo, however, is inconsistent with the statement the petitioner furnished with her application. In that statement, the petitioner asserted that [REDACTED] made several demands, including having sex against her will, and at 7:00 the next morning, she awoke to [REDACTED] shouting at her. She told him that she wanted to call the police as she had no money or place to go. [REDACTED] told her to go into the bedroom and that he would leave. When he left, the petitioner tried to call the police from the bedroom but the phone line was dead. About a half hour later, the police arrived. She was told that she must go with the police as [REDACTED] was throwing her out of the house. Upon leaving, she slapped [REDACTED] across the face.

The alleged abuse described by Dr. [REDACTED] and the domestic violence counselor were based solely upon testimony offered by the petitioner and upon a version of the events transmitted by the petitioner. No corroborating evidence was furnished to establish the petitioner's claim of abuse during the marriage. Official documents in the record reflect that the petitioner was arrested and charged with having abused [REDACTED] in the presence of police officers. She was also charged with violating a court restraining order against the petitioner by making harassing calls and threats to [REDACTED]

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 petitioner has failed to establish that, during the marriage, 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 record reflects that on June 10, 2000 the petitioner was arrested and charged with assault (NJ 2C:12-1a(1)). She failed to appear for her court hearing date and a Bench Warrant was issued for her arrest. The record shows that she appeared in court on February 7, 2001 and entered a plea of guilty to the charge. She was fined \$70 and assessed \$30 in costs. On July 3, 2000 she was charged with contempt (NJ 2C:29-9B)). She failed to appear for her court hearing date and a Bench Warrant was issued for her arrest. On December 11, 2001, the West Windsor Township Police Department, West Windsor, New Jersey, denied the applicant's request for a good-conduct letter because their investigation revealed that warrants were issued for her arrest on November 7, 2000, and on June 6, 2001, for contempt of court.

On appeal, counsel asserts that the petitioner's "moral character has only belatedly come into question as a result of her estranged

husband having filed an apparently frivolous assault complaint against her and because he disengenuously attempted to have her held in contempt of court." He submits a statement from Stacy Cohen, Esquire, stating that the petitioner was not convicted of the domestic violence complaint filed against the petitioner by Mr. [REDACTED] and that she was attaching the court disposition in this matter. Ms. Cohen further stated that she represented the petitioner with regard to contempt proceedings alleging she had violated a restraining order obtained by [REDACTED] that the matter against her was dismissed, and that she was attaching the court disposition in this matter. No court dispositions, however, were present in the record.

Based on the West Windsor Township Police Department's refusal to issue the applicant a good-conduct letter, and the petitioner's failure to submit the court dispositions of all her arrests, it is concluded that the petitioner has failed to establish that she is a person of good moral character. The petitioner has failed to overcome the director's finding 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.

On appeal, counsel asserts that the best way to establish the good faith of a spouse at the inception of the matrimonial relationship is by means of the testimony of mutual friends and acquaintances of the bride and groom. He submitted affidavits from nine individuals claiming to have personally known the petitioner and Mr. Dass at the time of their marriage.

The nine affidavits furnished by counsel, however, are hampered by the evidence of record which reflects that:

1. On March 2, 2001, the petitioner was advised of the intent of the Service to deny her application to remove the conditional basis of her permanent resident status (Form I-751) based on sworn statements by [REDACTED] dated June 12, 2000, and October 5, 2000. In his statements [REDACTED] alleged that the petitioner entered into the marriage solely to obtain an immigration benefit. Although the petitioner was accorded 15 days from the date of the notice in which to submit documentary evidence in support of her application and in opposition to the intended denial, the petitioner failed to respond to the Newark district director's notice of intent. The district director, therefore, determined that the petitioner failed to establish that her marriage was entered into for the purposes other than to procure her entry into the United States as an immigrant.

2. The marriage documents, filed in the Kyrgyz Republic,

indicate that [REDACTED] signed the documents with the notation, "signed under duress." In his sworn statement dated June 12, 2000, [REDACTED] stated that during an October 1999 visit to Russia with the petitioner he was forced to marry her because she had possession of his passport and refused to return it until they were married. He further stated that upon the petitioner's arrival in the United States on June 9, 2000, it became obvious that she had married him just for the "green card," as her demeanor changed for the worse and she became hostile and unresponsive.

It is concluded that the petitioner has failed to establish that she entered into the marriage to the U.S. citizen in good faith. The petitioner has failed to overcome the director's finding 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 appeal will be dismissed.

ORDER: The appeal is dismissed.