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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 01 264 50368

Office: Vermont Service Center

Date: 10/10/02

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 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 case will be remanded to the director for further action.

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 determined that the petitioner failed to establish that she entered into the marriage with her U.S. citizen husband in good faith. The director, therefore, denied the petition.

On appeal, the petitioner states that evidence of the good-faith marriage was provided before the INS Examiner and within the I-360 petition. She states that a brief and/or evidence will be submitted within 30 days. However, it has been approximately six months since the appeal was filed and neither a brief nor additional evidence has been received.

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 on September 22, 1993. The petitioner married her United States citizen spouse on October 2, 1996 at Bronx, New York. On August 31, 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.

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 and noted that the three photographs of the petitioner and her spouse, and the statement from the Chase Manhattan Bank, were insufficient to establish the existence of a good-faith marriage. He further noted that although the petitioner was requested on October 24, 2001 to submit additional evidence, she failed to provide any additional evidence to establish that she entered into the marriage in good faith.

The petitioner, on appeal, states that she did submit additional evidence as requested by the director. The record contains: (1) a statement from the petitioner indicating that her marriage was of good faith, that she did not provoke her husband's actions, that she always conducted herself with dignity and honor, and that she had respect for the marital bond with her husband; (2) a statement from [REDACTED] (the petitioner's spouse) indicating that he and the petitioner had a bona fide marital relation for many months and that he was responsible for the marital separation and the petitioner's sufferings; (3) copies of Mr. [REDACTED] earnings statements reflecting that he and the petitioner shared the same address; and (4) a letter from the petitioner's landlord attesting to the fact that the petitioner and Mr. [REDACTED] resided in her apartment.

The above documents, in conjunction with other documentary evidence contained in the record of proceeding, are sufficient to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome the director's sole ground for denial, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The case will be remanded so that the director may review the record of proceeding and determine whether the criteria listed in



8 C.F.R. 204.2(c)(1) is satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.