

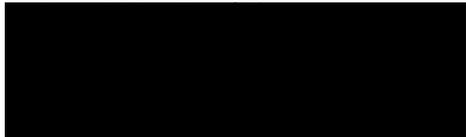


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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted]
EAC 00 264 50572

Office: Vermont Service Center

Date: 16 SEP 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:



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 England 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 submit satisfactory evidence to demonstrate that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the director's decision denying the Form I-360 solely on the basis that the petitioner failed to prove good moral character by failing to obtain a police certificate from Lancashire, United Kingdom, is legally insufficient especially when considering that the petitioner had requested and had filed on more than one occasion an I-131 requesting authority to travel to the UK to get the same precise documents that she needed in order to prove her good moral character. Counsel further asserts that the statute in question does not require police certificates for the finding of good moral character. It is only one of the pieces of evidence. He states that even without the police certificate from Lancashire, the petitioner has submitted substantial competent evidence which mandates a finding of good moral character on her part.

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 visitor on August 27, 1999. The petitioner married her United States citizen spouse on September 13, 1999 at Orlando, Florida. On August 10, 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. Accordingly, counsel's assertion that the statute in question does not require police certificates or clearances for the finding of good moral character is without merit.

The director determined that the petitioner failed to submit clearances from Lancashire, United Kingdom, as had been requested on October 20, 2000, on November 27, 2000, and on January 30, 2001. The director noted that although the petitioner claimed she was advised that she would not be able to obtain the requested evidence unless she applied in person, she submitted no evidence from authorities in the United Kingdom to support her claim that these documents are unavailable unless she applies in person. The director further noted that according to the Department of State Foreign Affairs Manual, applicants are legally entitled to gain



access to the information about themselves under Section 21 of the British Data Protection Act, 1984, and that persons residing outside the United Kingdom should write to the Data Processing Officer of the police authority where they last resided in the United Kingdom. The director, therefore, determined that the requested information was available to the petitioner without requiring her to apply in person.

On appeal, the petitioner did not address these findings of the director. Rather, counsel stated that the petitioner filed Forms I-131¹ requesting authority to travel to the United Kingdom to get the same precise documents that she needed in order to prove her good moral character.

The petitioner failed to submit a police clearance, criminal background check, or similar report issued by the appropriate authority in England, the foreign country where she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition on August 10, 2000. Nor did the petitioner submit evidence that she had attempted to obtain these documents through correspondence pursuant to Section 21 of the British Data Protection Act.

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.

¹ It is noted for the record that on February 19, 2002, the Form I-131, Application for Travel Document, was denied by the Service. The petitioner was advised that the basis of eligibility for an advance parole is dependent upon a pending application for adjustment of status (Form I-485), and that the petitioner has no Form I-485 currently pending before the Service.