



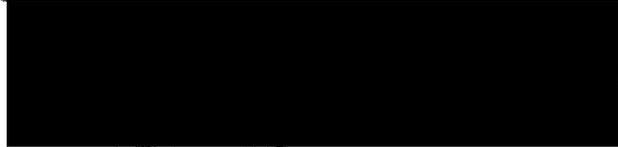
BA

U.S. Department of Justice

Immigration and Naturalization Service

Identifying cases deleted to prevent clearly unwarranted invasion of personal privacy

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



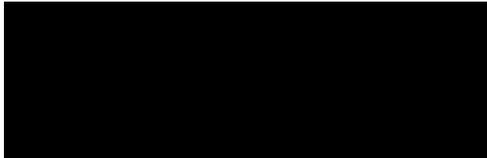
18 SEP 2002

FILE: [Redacted]
EAC 02 030 50670

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:



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 sustained.

The petitioner is a native and citizen of Mexico 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 to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the applicant entered into the marriage in good faith, and that she had a long standing relationship with her husband long before their wedding date. Counsel 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 petition, Form I-360, shows that the petitioner arrived in the United States on December 1, 1999. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on July 25, 2001 at El Paso, Texas. On October 22, 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.

Because the petitioner failed to submit evidence to show that she married her spouse in good faith, she was requested on February 5, 2002 to submit additional evidence. The director listed examples of the evidence she may submit to show the existence of a good-faith marriage. The director reviewed and discussed the evidence furnished by the petitioner. That discussion will not be repeated here. He noted, however, that although the petitioner was requested to give details regarding why the wedding photos show that she was married on different dates, she failed to do so. Nor did the petitioner submit any evidence to establish the existence of a good-faith marriage.

On appeal, counsel submits a statement from [REDACTED] of the Women's Resource Center apologizing for the mistake she made in labeling the photos. Counsel states that the petitioner and Mr. [REDACTED] began living together in 1999 and had a common home long before they were formally married on July 25, 2001. She submits: (1) a photo of the petitioner and [REDACTED] taken at the hospital, and [REDACTED] patient discharge form dated May 18, 2001, which shows that he listed the petitioner as his fiancée; (2) three cards and notes from [REDACTED] expressing his feelings for the petitioner; (3) [REDACTED] Purple Heart certificate and a notation written to the petitioner on the back, "This document so important to me, save it as remembrance of our love;" and (4) rent receipts from July 30, 1999 to June 1, 2000.

The documents furnished on appeal, in conjunction with other documentary evidence contained in the record of proceeding, are sufficient evidence to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, 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 met that burden. As the director did not raise any other basis for denial, the appeal will be sustained.

ORDER: The appeal is sustained.