



B9

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data 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 01 178 54750

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 dismissed.

The petitioner is a native and citizen of Trinidad 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 petitioner has been the victim of domestic abuse, and that within the abuse she made the ultimate sacrifice to save her marriage, only to be abandoned by her U.S. citizen spouse. 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 visitor on February 24, 1997. The petitioner married her United States citizen spouse on September 24, 1997 at Towson, Maryland. On April 30, 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.

The petitioner indicated on Part 3 of the Form I-360, Marital Status, that she was divorced. The director, therefore, requested that the petitioner submit the final divorce decree from her marriage to [REDACTED]. He noted that although the petitioner specifically indicated on the petition that she was currently divorced, she did not supply any evidence to corroborate her claim.

On appeal, counsel states that the petitioner is still legally married to [REDACTED] that he abandoned her without any notice, and there is no evidence that can be submitted. Counsel further states that the copy of the I-360 in her possession did not indicate that the petitioner divorced [REDACTED] and if it did so state on the Service's copy, it is erroneous, and that she be allowed to correct it.

The Service will, therefore, accept this response of counsel.

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 furnished insufficient evidence to establish that she has met this requirement, she was requested on June 7, 2001, and again in a notice of intent to deny dated January 24, 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 the evidence furnished by the petitioner in response to his request and noted that none of the affidavits indicates that the petitioner married her spouse in good faith. They only attest to the fact that she is a person of good moral character.

On appeal, counsel submits an affidavit from the petitioner stating that she married her husband for many reasons: "I loved him, I needed someone and he was there and he said all the things I needed to hear to make me feel secure for my children and myself. At that time I was on the verge of becoming homeless with my two kids. I

also tolerated my husband's bad behavior for some of the same reasons I married him. In spite of it all, my husband left me and sometimes I think he caused me more harm than good."

Counsel also submits an affidavit from [REDACTED] indicating that she is the cousin of the petitioner. [REDACTED] states that the petitioner spoke very excitedly about [REDACTED] and that the petitioner "stated to me that he loved her and she never felt anyone could ever love her like he did. She felt he loved her even more than her parents." [REDACTED] further states that after the petitioner's marriage to [REDACTED] she dropped by her house twice, and around Christmas of 1998 she invited the family but the petitioner did not seem to want to come, and stated that she might be going away for Christmas so she might not be able to make it. She indicates that [REDACTED] never said a word to her during her visit, she was very uncomfortable, and that was the last time she spoke to the petitioner until after [REDACTED] left the petitioner.

The affidavits, without supporting documentary evidence, are insufficient to establish the existence of a good-faith marriage. Although the director listed examples of evidence the petitioner may submit to show good-faith marriage, no evidence, other than affidavits, were submitted. Nor did the petitioner submit an explanation as to why such documentation is unavailable.

Furthermore, while these documents and other documents in the record establish that the petitioner and her spouse had resided together pursuant to 8 C.F.R. 204.2(c)(1)(i)(D), the petitioner has failed to establish that she entered into the marriage to the U.S. citizen in good faith 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.