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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



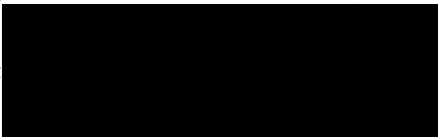
FILE



Office: Vermont Service Center

Date: DEC 18 2003

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER: Self-represented

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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Gomez for
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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Israel who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that she married her permanent resident spouse [REDACTED] two times, and that both marriages were in good faith. She states that a daughter was born to her and Mr. [REDACTED] during their first marriage, he failed to pay child support and maintenance, and that Mr. [REDACTED] lied to her in order to get her to marry him once again.

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 married her lawful permanent resident spouse on November 23, 1984 in the Dominican Republic, and ended by divorce on August 28, 1988. The petitioner and Mr. [REDACTED] remarried on March 20, 1997 in the Dominican Republic. The self-petition shows that the petitioner entered the United States without inspection on December 14, 1998. On July 11, 2002, 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 permanent resident spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with the citizen or lawful permanent resident spouse. Additionally, 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith.

Because the petitioner furnished no evidence to establish that she has met these requirements, she was requested on January 27, 2003, to submit additional evidence. The director listed examples of the evidence she may submit to show joint residence and good-faith marriage. The director noted that in response, the petitioner did not provide any evidence to show that she and Mr. [REDACTED] shared a common residence during the marriage, and she did not provide any evidence to establish her intent in marrying her spouse.

On appeal, the petitioner states, in a self-affidavit, that Mr. [REDACTED] returned to the Dominican Republic and found her living alone with two children, and that she was already in divorce proceedings from her second husband. Mr. [REDACTED] made promises to

her to become a better person, a responsible father, a loving partner, and many other promises that he did not keep after she came to the United States, including promises that he would file and complete an adjustment application on her behalf.

The petitioner also submits a statement from her daughter [REDACTED] [REDACTED] stating that she is the biological daughter of the petitioner and Mr. [REDACTED]. After the divorce of her parents, her mother married [REDACTED] another child was born during this marriage and they grew up together in the Dominican Republic. She further states that her mother remarried her father and they all live in New York.

Neither the petitioner nor her daughter, however, furnished any evidence to establish that the petitioner and Mr. [REDACTED] resided together in New York as claimed. Nor did the petitioner furnish any evidence to establish that she entered into the marriage to Mr. [REDACTED] in 1997 in "good faith." Furthermore, although the director listed examples of evidence the petitioner may submit to show joint residence and to show the existence of a good-faith marriage, these were not submitted, nor did the petitioner submit an explanation as to why such documentation is unavailable.

The petitioner has failed to overcome the findings of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D) and (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.