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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



FILE: [Redacted]
EAC 02 246 54770

Office: Vermont Service Center

Date: **JAN 13 2003**

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 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: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (3) has resided in the United States with the citizen or lawful permanent resident spouse; (4) 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; (5) is a person of good moral character; and (6) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner submits additional evidence. She states that it has been very hard to locate her husband as they are separated because she was physically harmed by him. The petitioner requests 30 days in which to locate her husband or relatives in order to obtain evidence of his citizenship. However, it has been approximately eight months since the filing of the appeal in this matter, and no additional evidence has been received in the record of proceeding.

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 April 15, 1988. However, her current immigration status or how she entered the United States was not shown. The petitioner married her spouse on November 19, 1992 at El Paso, Texas. On August 24, 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.

PART I

8 C.F.R. 204.2(c)(1)(i)(A) provides that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States. Additionally, 8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

The director noted that the petitioner claimed that her spouse is a United States citizen. However, she failed to provide the Service with any other documentation although she was requested on October 10, 2001 to submit additional evidence. The petitioner, on appeal, requests 30 days in which to obtain evidence of her

spouse's citizenship. However, no additional evidence has been received in the record of proceeding.

The petitioner has failed to overcome these findings of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

PART II

8 C.F.R. 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with her U.S. citizen spouse.

The director determined that the petitioner failed to submit any evidence to establish that she and her spouse resided together, although she was requested on October 10, 2001 to submit additional evidence.

On appeal, the petitioner submits photographs of her and her husband, and several bills and receipts that are all under the petitioner's name. These documents do not establish that the petitioner and her spouse shared a joint residence in the United States.

The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(D).

PART III

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including

rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director determined that the petitioner failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by her spouse. On appeal, the petitioner submits a copy of a police report, previously furnished and contained in the record of proceeding, reflecting that on September 30, 1994, the petitioner's spouse struck the petitioner with a closed fist to the face, three times, causing swelling and pain. The record also contains statements from family members and friends

indicating that they were witnesses to the physical abuse perpetrated by the petitioner's spouse.

Accordingly, it is concluded that the petitioner has been the victim of physical abuse perpetrated by her spouse. The petitioner has overcome this portion of the director's finding, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

PART IV

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.

The director determined that the petitioner failed to submit any evidence to establish that she is a person of good moral character, although she was requested on October 10, 2001 to submit additional evidence.

On appeal, the petitioner neither addressed nor submitted any evidence of her good moral character. Accordingly, the petitioner has failed to overcome this finding of the director, pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

PART V

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 determined that the petitioner failed to submit any evidence to establish that she entered into the marriage in good faith, although she was requested on October 10, 2001 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 noted that although the petitioner submitted three

photographs of her and her husband, no additional evidence was furnished.

On appeal, the petitioner submits additional photographs of her and her husband, and several bills and receipts all under the petitioner's name. While these photographs may be considered to establish good-faith marriage if accompanied by other credible evidence, the petitioner neither addressed nor submitted evidence to establish that she entered into the marriage in good faith.

The petitioner has failed to overcome this finding of the director, 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.