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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: MAY 16 2003
EAC 01 178 54750

IN RE: Petitioner:
Beneficiary: [redacted]

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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

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 denied the petition after determining that the petitioner failed to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). He noted that none of the affidavits furnished by the petitioner indicated that the petitioner married her spouse in good faith.

The AAO reviewed and discussed the two affidavits furnished by the petitioner on appeal, and determined that these affidavits, without supporting documentary evidence, are insufficient to establish the existence of a good-faith marriage. The AAO noted that although the director listed examples of evidence the petitioner may submit to show good-faith marriage, no evidence, other than affidavits, was submitted. Furthermore, the petitioner failed to submit an explanation as to why such documentation was unavailable. The AAO, therefore, concurred with the director's conclusion and denied the petition on September 18, 2002.

On motion, counsel submits affidavits which she claims were never received by the Service, and which were forwarded again; she states that therefore, the petitioner's application was never considered in its entirety at any one time. Counsel submits documentation previously furnished by the petitioner and included in the record of proceeding. This documentation, in the form of affidavits, was reviewed and discussed by the director in his decision. He noted that although the petitioner was requested on June 7, 2001, and again on January 24, 2002, to submit evidence that she married her spouse in good faith, the petitioner submitted copies of affidavits that were already contained in the record. He noted that while these affidavits indicate that the petitioner has been the subject of extreme cruelty and that she is a person of good moral character, none indicate that the petitioner married her citizen spouse in good faith.

Again, on motion, counsel submits copies of the same affidavits. She states that the petitioner was unable to provide independent objective proof of good-faith marriage other than by testimony. As previously noted, however, these affidavits, and other documents contained in the record, were reviewed by the director and the AAO

and were determined to be insufficient to establish the existence of a good-faith marriage.

Counsel, on motion, also submits an affidavit from a licensed social worker and certified mediator for the Department of Social Services in New York. While this affidavit supports the petitioner's claim that she was the subject of extreme cruelty, it is insufficient to establish the existence of a good-faith marriage. Counsel also submits copies of 3 greeting cards allegedly given to the petitioner by her spouse, and copies of 4 photographs she claims were taken by a friend during a social outing. These cards, however, appear to be written in different handwriting and are similar to the handwriting on the 4 photographs. Furthermore, the photographs do not serve to establish that the marriage was entered into in good faith. While the photographs appear to show that the petitioner and her spouse were in the same place at the same time, they do not establish clearly that the marriage to her spouse was bona fide.

As previously determined by the AAO, the evidence of record established that the petitioner and her spouse had resided together, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D). The petitioner, however, has failed to establish that she entered into the marriage to the U.S. citizen in good faith, and to overcome the findings of the director and the AAO, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

Accordingly, the decision of the AAO dated September 18, 2002, will be affirmed.

ORDER: The decision of the AAO dated September 18, 2002, is affirmed.