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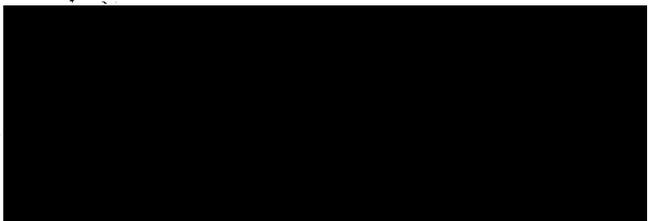
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U.S. Citizenship
and Immigration
Services

B9

APR 20 2004



FILE:



Office: VERMONT SERVICE CENTER

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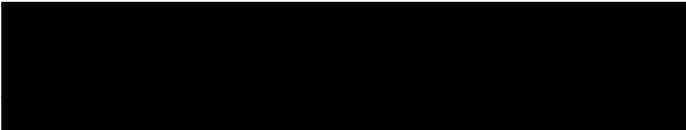
IN RE:

Petitioner:
Beneficiary:



PETITION: 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Cindy N. Honey 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 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 is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that misrepresentation not under oath does not amount to "false testimony" under section 101(f) of the Act, 8 U.S.C. § 1101(f). He further asserts that there is absolutely no evidence that the petitioner ever orally lied to any government official while under oath, and that the petitioner's misrepresentation to a United States Immigration Inspector at Eagle Pass, Texas, did not constitute "false testimony" because it was not made under oath. Counsel asserts that since the petitioner never offered any false testimony, section 101(f) of the Act does not apply, and there should not be any further bars to a finding of good moral character.

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 child¹; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the petitioner arrived in the United States in March 1997. However, her current immigration status or manner of entry into the United States was not shown. The petitioner married her United States citizen spouse on April 8, 2000 at Dallas, Texas. On October 1, 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)(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 date 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 maintained that the petitioner failed to establish that she met the provisions of section 101(f)(6) of the Act, and the Service [now Citizenship and Immigration Services (CIS)] is not precluded from considering good moral character prior to the three-year period when such circumstances exist. The director determined that the record did not establish that the petitioner qualified as a person of good moral character based on her conviction on February 26, 1996, of attempted illegal entry by false and misleading representation.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), states, in part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(7) of the Act states in part:

(A)(i) Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission --

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), is inadmissible.

The record reflects that on February 23, 1996, at the port of Eagle Pass, Texas, the petitioner attempted entry into the United States by declaring to be a lawful permanent resident alien. She presented a Form I-551 (Alien Registration Receipt Card) belonging to another person into which her photograph had been substituted. In a sworn statement before an officer of the Service, the petitioner admitted that she paid \$100 to a friend in Mexico for the photo-altered Form I-551 and a valid Social Security card. She admitted that she was aware it was illegal to attempt entry into the United States with fraudulent documents. The petitioner was detained for a hearing before an Immigration Judge after it was determined that she was inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act.

The record further reflects that on February 26, 1996, in the United States District Court, Western District of Texas, Case No. DR96-0358M-01, the petitioner entered a plea of guilty to attempted illegal entry by false and misleading representation, in violation of 8 U.S.C. § 1325(a)(3). The petitioner was adjudged guilty of the offense, and she was sentenced to imprisonment for a term of 100 days.

In removal proceedings on June 4, 1996, the Immigration Judge found the petitioner inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act, and ordered the petitioner removed from the United States. The Form I-296 (Notice to Alien Ordered Excluded by Immigration Judge) shows that the applicant was removed to Mexico, on foot, from the Laredo, Texas, port of entry on June 4, 1996. The petitioner was advised that her reentry within one year of the date of her removal without express permission of the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] would subject her to prosecution.

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), states, in part:

Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal is inadmissible.

Section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), states, in part:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The petitioner indicated on the Form I-360 that she arrived in the United States in March 1997, less than one year after her removal on June 4, 1996. There is no evidence in the record that she was granted permission by the Secretary to reenter the United States. Therefore, it appears that the petitioner may also be inadmissible to the United States, pursuant to Section 212(a)(9)(A)(i) of the Act, based on her reentry into the United States within one year of her removal.

Counsel asserts that since the petitioner never offered any false testimony, section 101(f) does not apply and there should not be any further bars to a finding of good moral character. Section 204(a)(1)(C) of the Act states:

Notwithstanding section 101(f), an act of conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

The petitioner, in this case, was found inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, as an alien who sought to procure entry into the United States by fraud or willfully misrepresenting a material fact, and she was subsequently convicted for attempted illegal entry by false and misleading representation. There is no evidence that this conviction was connected to the petitioner's having been battered or subjected to extreme cruelty. In fact, the record shows that the petitioner was convicted on February 26, 1996, she was ordered removed from the United States on June 4, 1996, and she was not married to her abusive spouse until April 8, 2000.

Accordingly, as determined by the director, it is concluded that the petitioner has failed to establish that she is a person of good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

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.