



U.S. Citizenship
and Immigration
Services

B9

[REDACTED]

FILE: [REDACTED]
EAC 03 069 53413

Office: VERMONT SERVICE CENTER

Date: AUG 16 2004

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

[REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Acting 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 Ghana 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.

On April 2, 2004, the acting director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a statement and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

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 . . . 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; [and]

* * *

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

According to the evidence on the record, the petitioner's first marriage ended in divorce on December 10, 1999. The petitioner wed her citizen spouse, 22 years her senior, on March 20, 2000 in Ghana. The petitioner's citizen spouse filed a Form I-130 petition on her behalf, which was denied for lack of prosecution on September 14, 2001. On February 3, 2003, the petitioner filed a self-petition, 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 acting director denied the petition, in part, finding that the evidence was insufficient to establish that the petitioner had resided with her citizen spouse. The evidence relating to joint residence consists of the following:

- The petitioner's affidavit.
- The petitioner's mother's affidavit.
- The petitioner's sister's affidavit.
- An affidavit of a friend of the petitioner.

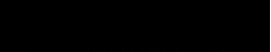
In a request for additional evidence on September 26, 2003, the acting director requested the petitioner to submit additional evidence to establish that the petitioner had resided with her citizen spouse. The acting director gave the petitioner examples of the types of evidence that might establish joint residency. In review, the evidence is insufficient to establish that the petitioner resided with her citizen spouse. The petitioner failed to submit joint leases, mortgages or rental agreements. She failed to submit insurance policies listing a common address for the petitioner and her spouse. She failed to submit utility bills, bank statements or financial documents indicating commingling assets and listing a common address for the petitioner and her spouse.

The acting director denied the petition, in part, finding that the petitioner had failed to establish that she had married her citizen spouse in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with affidavits of a friend and family member that state that the petitioner lived with her citizen spouse. The petitioner failed to submit objective evidence showing that she and her citizen spouse shared assets or liabilities or other evidence of a common life. She did not submit a lease agreement or a mortgage. No children were born of the marriage. In review, the evidence is insufficient to establish that the petitioner wed her husband in good faith.



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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.