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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

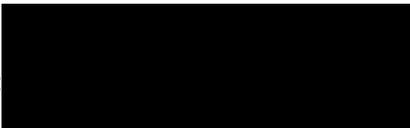
Date:

DEC 14 2004

EAC 02 271 53673

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:

SELF-REPRESENTED

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.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic 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, finding that the petitioner failed to establish that she had entered into the marriage to the citizen in good faith.

On appeal, the petitioner submits 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.

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.

According to the evidence on the record, the petitioner wed [REDACTED] U.S. citizen, on May 27, 1994 in Santo Domingo, Dominican Republic. The record indicates that the petitioner is 12 years older than her spouse. On August 22, 2002, the petitioner filed a Form I-360 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 regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had entered into the marriage in good faith and is a person of good moral character, she was requested on August 21, 2003 to submit additional evidence. The director listed the types of evidence the petitioner could submit that would show she married her spouse in good faith, and that she is a person of good moral character. The petitioner responded to the request for additional evidence.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. The director determined that the petitioner failed to establish that she had entered into the marriage in good faith.

On appeal, the petitioner submits evidence she had previously submitted to Citizenship and Immigration Services (CIS). She indicated that she was submitting proof that she filed a federal income tax return claiming married status, but such evidence is not in the record.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

The evidence consists of the following:

- An affidavit written by a friend of the petitioner stating that the petitioner and her husband were a "lovely couple."
- An affidavit of a co-worker of the petitioner stating that he has "seen how much [the petitioner's husband] love her [sic] wife, every time he picks her up from her job."

- An affidavit written by a friend that states that the petitioner is her “best and loyal friend,” “[the petitioner’s husband] is a lovely person. I see then [sic] together and they are very happy, they live on for each other.”
- An affidavit written by [REDACTED] that states that “[w]e get together like family in specials occasions; they look as a very nice couple.”
- The petitioner’s federal income tax returns indicating that she filed as head of household in 1997, 1998, and 1999.

In review, the affidavits are vague. The affiants failed to indicate how often they socialized with the petitioner and her spouse. The petitioner failed to submit insurance policies in which she or her husband is named as the beneficiary. She failed to submit bank statements and other financial records that show she shared accounts and other responsibilities with her spouse. She provided no evidence of their courtship or wedding ceremony. She provided no evidence of joint ownership of property. No children were born of the marriage. The petitioner has failed to establish that she married her citizen spouse in good faith.

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.