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U.S. Citizenship
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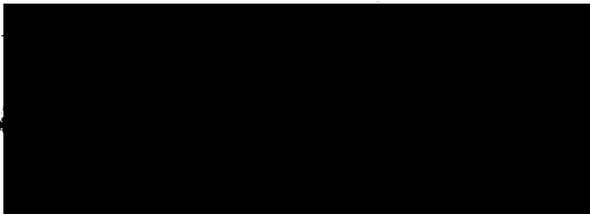
Office: VERMONT SERVICE CENTER

Date:

DEC 14 2004

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.

Mari Johnson

for 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 on appeal. The appeal will be dismissed.

The petitioner is a citizen and native 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 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.

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.

The record reflects that the petitioner wed United States citizen Juan Fernandez Rodriguez on December 3, 1999 in New York City, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. On June 17, 2003, 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)(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 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 resided with her spouse, had been battered or subjected to extreme cruelty by her citizen spouse, and married her husband in good faith, she was requested on January 6, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, and that she married her spouse in good faith.

On December 24, 2003, the director again requested additional evidence from the petitioner to establish that she had been battered or subjected to extreme cruelty by her spouse and that she married her spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her requests for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits additional evidence.

In review, the evidence is insufficient to establish that the petitioner entered into the marriage with her citizen spouse in good faith. In two requests for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The evidence provided by the petitioner in response consists of the following:

- The petitioner's statement dated January 24, 2004.

- An undated assessment that was previously submitted.
- Letters written by two friends of the petitioner, [REDACTED] and [REDACTED].
- An affidavit signed by the petitioner's citizen spouse.
- An affidavit of the petitioner's landlord.
- Letters from two church officials.
- A Time Warner Cable receipt in the petitioner's spouse's name dated October 26, 2001, indicating that he resided at [REDACTED].
- Two rental receipts for rent received from the petitioner for a rental unit at [REDACTED] for the months of October and November 2001.
- A Time Warner Cable bill addressed to the petitioner's spouse in care of the petitioner at [REDACTED] New York for September 2000 and August 2001.
- A cancelled bankbook listing the petitioner as the account holder in trust for the petitioner's spouse.
- A financial statement addressed to the petitioner's spouse alone dated September 2003 and addressed to [REDACTED] New York.
- A Time Warner Cable bill dated August 11, 2001, addressed to the petitioner's spouse alone at [REDACTED] New York.
- An undated Verizon bill in the petitioner's spouse's name.

The assessment states that the petitioner married her spouse in 1999 after a brief courtship. Similarly, the petitioner's statement provides scant information about her courtship and marriage to the citizen spouse. On appeal, counsel for the petitioner submitted letters from several friends of the petitioner that do not address the bona fides of the marriage. The petitioner submitted an affidavit from her citizen spouse that states that he met the petitioner through a mutual friend at a party in the spring of 1998 and that he left the marital home in March of 2001 so he could be free. The petitioner submitted a letter from her landlord indicating that the petitioner and her spouse resided together at [REDACTED] New York from September 15, 1999 until May 2000. The landlord's assertion that the petitioner and her spouse resided together until only May 2000 is inconsistent with the statements of the petitioner and her spouse that they lived together until March 2001. The petitioner's statement that she met her spouse in November 1996 is inconsistent with the petitioner's spouse's affidavit in which he states that they met in the spring of 1998. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The receipts and bills

submitted do not show that the petitioner and her spouse shared financial responsibilities. Every receipt and bill was in the name of either the petitioner or her spouse, but not in both names. The cancelled bankbook is not evidence that the petitioner and her spouse pooled their assets because it is in the name of the petitioner in trust for her husband. It is not a joint account. The petitioner failed to submit insurance policies in which the petitioner or her spouse is named as the beneficiary. She failed to submit bank statements and tax records that show she and her spouse shared accounts. She provided scant evidence of her courtship and married life. She provided no evidence of joint ownership of proper. No children were born of the marriage. The evidence on the record is insufficient to establish that the petitioner 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.