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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
SRC 01 264 52579

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 51-year old native and citizen of Hungary 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 is a person of good moral character and entered into the marriage in good faith.

On appeal, counsel for 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 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 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;

* * *

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

According to the evidence on the record, both the petitioner and her citizen spouse [REDACTED] had been previously married. The record reflects that [REDACTED] AKA [REDACTED] on July 17, 1966 and divorced August 24, 2000. The petitioner wed [REDACTED] on July 17, 1993 and divorced on March 1, 2000 in Hungary. The petitioner entered the United States on a B-2 visitor visa on July 18, 2000. The petitioner wed her citizen spouse twice, first on July 26, 2000 and again on September 12, 2000. The petitioner and her citizen spouse remarried when they realized that the citizen spouse's first divorce was not final until August 24, 2000. The petitioner's citizen spouse filed a Form I-130 petition on her behalf on October 17, 2000 and subsequently withdrew the petition. The district director terminated action on the Form I-130 on March 19, 2004. The petitioner's citizen spouse initiated divorce proceedings. They were divorced on June 22, 2001 in Miami, Florida. On April 21, 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 director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character and entered into the marriage with the citizen spouse in good faith.

On appeal, counsel for the petitioner submits additional evidence.

The director determined that the petitioner failed to establish that she entered into her marriage with a U.S. citizen in good faith. The AAO concurs.

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 evidence on the record relating to the bona fides of the marriage is as follows:

- The petitioner's statements.
- Affidavits of friends of the petitioner that state that the petitioner and her husband "seemed to be in love with each other."
- A bank statement in the name of the petitioner alone.
- A bank statement in the name of the petitioner's spouse alone showing an address of [REDACTED] New York.

- An envelope addressed to the petitioner showing an address [REDACTED] Street, [REDACTED].
- A birthday card, ostensibly from the petitioner's citizen spouse to the petitioner.
- Statements from the owner and manager of the Bimini Motel attesting that the petitioner and her husband vacationed at their motel in the summer of 2000.
- Affidavits from friends indicating that the petitioner and her husband were guests at their homes.
- Photographs of the petitioner and her citizen spouse.
- Statement of a church pastor stating that the petitioner and her spouse joined the First Hungarian United Church of Christ in Miami in September 2000 and that in February 2001 the petitioner sought pastoral marital counseling but that her spouse failed to appear for counseling sessions.
- A signed mutual release in which the petitioner's citizen spouse agreed to pay the petitioner \$10,000 upon the sale of their condominium.

The affidavits provide scant detail regarding the petitioner and her husband's courtship and marriage. The petitioner failed to submit evidence of insurance policies in which the petitioner or her husband is named as the beneficiary. She failed to submit tax records or other financial records showing that the petitioner and her husband shared financial responsibilities. No children were born of the marriage. The evidence is insufficient to establish that the petitioner wed her U.S. citizen spouse in good faith.

In a request for additional evidence, the director asked the petitioner to submit additional evidence of her good moral character. The director informed the petitioner that if the police clearance was researched by name only, she must supply the law enforcement agency with all aliases she had used. In response to the request for additional evidence, counsel for the petitioner asked the director to render a decision based upon the evidence previously submitted. On appeal, the petitioner submits a police clearance from the Miami-Dade police department. However, she did not submit a clearance to cover her residency in New York. Further, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The evidence is insufficient to establish that the petitioner is a person of good moral character.

Beyond the decision of the director, it is noted that the petitioner and her citizen spouse were divorced prior to the filing of the instant petition. The petitioner failed to establish that the marriage was terminated due to abuse. For this additional reason, the petition may not be approved.

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.