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U.S. Citizenship
and Immigration
Services

B9



FILE: [REDACTED]
EAC 03 008 53592

Office: VERMONT SERVICE CENTER

Date: DEC 14 2004

IN RE: Petitioner: [REDACTED]
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:



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.

Maif Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: In a decision dated January 8, 2004, the Vermont Service Center Acting Director denied the preference visa petition, finding that the petitioner failed to establish that she married her spouse in good faith. The petitioner filed a notice of appeal on March 1, 2004. The director rejected the appeal as untimely but treated the appeal as a motion to reopen. The director reaffirmed her prior decision denying the petition. The matter 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, counsel for the petitioner asserts that the director's decision is unjust. Counsel further asserts that it is illogical to find that the petitioner was abused by her spouse and that she entered into a sham marriage.

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 Francisco Arturo Mena on May 14, 1996 in New York, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on August 20, 1996. On March 20, 1997, the petitioner and her spouse appeared at the district office for an interview. The district director determined that the petitioner and her spouse failed to establish the bona fides of the marital relationship; therefore, the case was referred for a Stokes interview. On April 26, 2001, a Stokes interview was held, and the district director determined that the petitioner and her spouse had failed to establish that their marriage was not entered into for the purpose of evading immigration laws. On October 3, 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, she was requested on May 22, 2003 and September 8, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, 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. The director denied the petition on the sole basis that the petitioner had failed to establish that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a statement, asserting that it is illogical to find that the petitioner was abused by her spouse and that she entered into a sham marriage with the abusive spouse; however, the petitioner did not submit any additional evidence to establish that she entered into the marriage in good faith.

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). 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. On appeal, the petitioner submits additional affidavits of friends attesting to the bona fides of her marriage. 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 on the record includes photographs of the petitioner and her spouse; copies of the petitioner's work authorization and social security card; a partial copy of the petitioner's passport; transcripts of the petitioner and her spouse's Stokes interview; and the district director's decision denying the Form I-130 petition. 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.