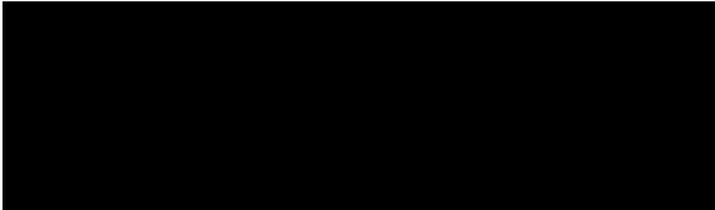


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [redacted] Office: VERMONT SERVICE CENTER

Date:
FEB 24 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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the 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 India 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 determined that the petitioner failed to establish that he is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A), based on that relationship. He noted that the petitioner is subject to the provisions of section 204(c) of the Act, 8 U.S.C. § 1154(c). The director, therefore, denied the petition.

On appeal, counsel states that the petitioner contended that his former wife was simply upset when she made a statement to Citizenship and Immigration Services (CIS) regarding their "alleged marriage fraud," and that she did not know what she was saying. He further states that the petitioner has now procured an affidavit from his former wife attesting to the validity of their marriage, and that any statements she made to the contrary were incorrect. Counsel submits additional documentation.

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

(i) 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;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States as a visitor on January 23, 1989. The petitioner married his United States citizen spouse on May 15, 1998 at Bradenton, Florida. On July 18, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that he is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

Section 204(c) of the Act states that no petition shall be approved if

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The director reviewed the evidence of record and noted that the petitioner had previously been married to [REDACTED] who, in a sworn statement on April 23, 1992, stated that she was paid \$2,000 to enter into a marriage with the petitioner. Because the petitioner was subject to the provisions of section 204(c) of the Act, he was granted, in a notice of intent to deny dated January 8, 2003, an opportunity to submit compelling evidence that would overcome the grounds for denial. The director determined that the affidavits furnished, including the petitioner's affidavit, furnished in response to his request for additional evidence, were insufficient to overcome the grounds of section 204(c) of the Act.

Counsel, on appeal, submits affidavits from five acquaintances attesting to the petitioner's good moral character. He also submits an affidavit dated May 27, 2003, signed by [REDACTED] the petitioner's former U.S. citizen spouse. The affidavit states, in part:

- That she and said Devanand Gollamudi married with the sole intent of being married for so long as they shall live, and never married for any illegal or immoral purpose, including marrying for any purpose of Devanand Gollamudi gaining any immigration status in the [U]nited States.
- That said Devanand Gollamudi never paid any sum of money, or anything of value, or made any promise to her for her promise to marry him, other than accepted promises of the marriage commitment.
- That in the event she has ever said or made any statement contrary to the statements made herein, they were incorrect to the extent inconsistent with the statements herein, and any such statements were made without full knowledge of their meaning, and without any intent to make a false statement.

The credibility and reliability of this affidavit is questioned. It is noted that [REDACTED] did not personally make this statement. Rather, it appears that it was drafted by someone else and written in the "third person," and subsequently signed by [REDACTED]

However, even if the affidavit was, in fact, written by [REDACTED] the record reflects that the Form I-130, Petition for Immediate Relative, filed by [REDACTED] on behalf of the petitioner, was denied on April 25, 2001, pursuant to section 204(c) of the Act, based on [REDACTED] sworn statement taken before an Immigration officer on April 23, 1992. In that sworn statement, she averred that she was offered \$2500 to marry the petitioner and did so for immigration purposes. The petitioner's application for adjustment of status to permanent residence (Form I-485) was also denied on April 26, 2001, pursuant to section 204(c) of the Act, based on Ms. Colon's statement.

As provided in section 204(c) of the Act, no petition shall be approved if the alien has previously been accorded, or has sought to be accorded, immediate relative status as the spouse of a citizen of the United States by reason of a marriage determined by the Attorney General (now the Secretary of the Department of Homeland Security) to have been entered into for the purpose of evading the immigration laws.

Accordingly, the petitioner is ineligible for the benefit sought. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B).

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.