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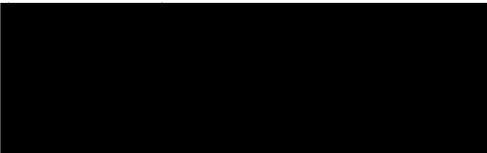
Office: VERMONT SERVICE CENTER

Date: JUL 20 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.

Elizabeth Davis
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 native and citizen of Mexico 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.

On October 21, 2003, the acting director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character.

On appeal, counsel for the petitioner submits a brief.

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 . . . 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.

According to the evidence on the record, the petitioner wed United States citizen Antonio Rangel, Jr. on December 2, 1994 in Napa, California. According to the evidence, the petitioner and her citizen spouse had a child born of the marriage. The record further indicates that the petitioner was ordered removed on two occasions; first on December 27, 1998 and again on March 2, 2002. On December 27, 1998, the petitioner was charged with entering without inspection and making a false claim to citizenship and was summarily removed. On March 2, 2002, after attempting a reentry, the earlier order was reinstated, and the petitioner was again removed. The record shows that the petitioner's spouse filed a Form I-130 petition on her behalf that was approved on May 16, 1995. On April 25, 2001, the petitioner filed a 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 had failed to establish that she is a person of good moral character.

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character, the acting director requested that she submit additional evidence on May 29, 2001. The acting director specifically requested that the petitioner submit police clearances. Although the petitioner responded to the request for additional evidence, she failed to submit any police clearances.

On appeal, counsel for the petitioner states that the petitioner failed to file for adjustment of status because she speaks little English. Counsel further states that the petitioner believed that she was a citizen by virtue of her marriage to a citizen and that she does not recall claiming to be an American. Counsel states that the petitioner's spouse is now deceased, but failed to provide evidence of his death.

A review of the evidence reveals that the petitioner presented a false identification card and birth certificate claiming to be a citizen to gain entry into the United States. The petitioner admitted as much in a written statement.

The petitioner failed to explain why she did not submit the requested police clearances.

Section 101(f) of the Act states, in part, that:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act.

The evidence on the record shows that the petitioner gave false testimony for the purpose of obtaining entry into the United States, i.e., to obtain a benefit under the Act and is therefore statutorily barred from establishing that she is a person of good moral character for the purposes of the Act.

Beyond the decision of the acting director, the petitioner failed to establish that she had resided with her citizen spouse. Given that the appeal will be dismissed for the reason discussed above, this issue will not be analyzed further.

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.