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U.S. Citizenship  
and Immigration  
Services

BA

[Redacted]

FILE: [Redacted]  
EAC 02 242 52966

Office: VERMONT SERVICE CENTER

Date: JUL 23 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

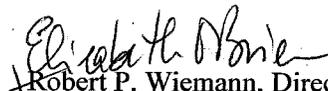
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[Redacted]

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.

  
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 (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.

In a Notice of Intent to Deny the Petition, the director informed the petitioner that she had failed to establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act and failed to establish that she entered into the marriage to the citizen in good faith.

The petitioner responded to the Notice of Intent to Deny the Petition. The director discussed the evidence and denied the petition, finding that the petitioner had failed to establish that she is a person of good moral character. The director also found that she entered into the marriage with her first husband for the purpose of obtaining immigration benefits.

On appeal, counsel for the petitioner submits a brief and an additional item of 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 . . . 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 record reflects that the petitioner has been married three times.<sup>1</sup> According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on November 8, 1990 in New Jersey [REDACTED] filed a Form I-130 on behalf of the petitioner and the petitioner's daughter from a prior relationship. Approval of the Form I-130 petition was revoked on April 2, 1993, on the finding that the marriage was a sham, due in part to the petitioner's confession to the sham marriage. The director's revocation of the approval was not appealed and is final. Jorge Medina died on May 4, 1992.

According to the evidence on the record, the petitioner wed [REDACTED] and divorced him on August 18, 1997 in the Dominican Republic.

The petitioner wed U.S. citizen [REDACTED] in Elizabeth, New Jersey on May 12, 1998. [REDACTED] filed a Form I-130 on the petitioner's behalf, which appears to have been abandoned. On June 23, 2000, the petitioner filed a Form I-360 based on her marriage to [REDACTED] (EAC0107454313) that was denied due to abandonment. On July 15, 2002, she again filed a Form I-360 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, [REDACTED] during their marriage. The record further reflects that the petitioner has two children: [REDACTED] born December 6, 1994 in New Jersey, and [REDACTED] born on October 21, 1980 in the Dominican Republic.

The director determined that the petitioner had failed to establish that she is a person of good moral character, noting that the petitioner had made a written confession to having wed her first citizen spouse for the purpose of gaining an immigration benefit and to having engaged in alien smuggling.

On appeal, counsel for the petitioner asserts that the petitioner signed a statement confessing to the sham marriage to her first husband without reading it; hence, she cannot be bound by its contents. Counsel further asserts that the petitioner believed that her nephew was her child because she had been raising him as her own child, and thus she is not guilty of alien smuggling.

Counsel's assertions are not persuasive.

<sup>1</sup> It is noted that the petitioner failed to list her former husbands on the Form G-325A, Biographical Data Sheet when her third husband filed a Form I-130 on her behalf. Instead, she wrote "none" on the line for former spouses.

Section 204(c) of the Act, 8 U.S.C. § 1154(c) provides, in part:

[N]o 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....

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides, in part:

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Inasmuch as the record conclusively demonstrates that the petitioner entered into a marriage for the purpose of evading the immigration laws, she is ineligible for this visa classification.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a Notice of Intent to Deny Petition, the director requested that the petitioner submit evidence of her good moral character. While the petitioner submitted a police clearance, it was in only one rendition of the petitioner's name, rather than in all renditions. The petitioner sought to rebut the director's finding of the sham marriage to her first husband and of alien smuggling by asserting that she believed that she could claim her nephew as her own child upon entry into the United States and that she signed the confession before the U.S. consular official without reading it. The petitioner's rebuttal is not persuasive.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), provides, in pertinent part:

*For the purposes of this Act* – No person shall be regarded as, or found to be, a person of good moral character who . . . is . . . (3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs . . . (6)(E) . . . of section 212(a) [alien smuggler] . . . of which he admits the commission; [or] (6) one who has given false testimony for the purpose of obtaining any benefits under the Act.

Section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i) provides that:

Any alien who at any time knowingly has encouraged, induced, assisted, abetted or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The evidence on the record conclusively indicates that the petitioner admitted that she had engaged in alien smuggling and had given false testimony for the purpose of gaining an immigrant visa and permanent resident status through her first husband. Thus she cannot establish good moral character as defined under section 101(f) of the Act and is ineligible for the visa classification.

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.