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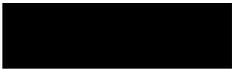
U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 28 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: Self-represented

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
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 Peru 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 after determining that the petitioner had failed to submit evidence requested to establish eligibility for the benefit sought.

On appeal, the petitioner asserts that she had previously sent all the evidence and that it apparently was lost in the mail. She states that she is enclosing all the documents for the second time.

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 child¹; and

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

The Form I-360, Petition for  or Special Immigrant, indicates that the petitioner entered the United States without inspection on November 25, 1993. The petitioner married her United States citizen spouse

¹ On October 28, 2000, the President approved the enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act to enable an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen to no longer be required to demonstrate that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

on April 12, 1996 at ██████████ New Jersey. On April 11, 2002, 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, her U.S. citizen spouse during their marriage.

The director reviewed the evidence furnished by the petitioner and determined that: (1) the petitioner's affidavit alleging that she was abused by her spouse did not carry sufficient evidentiary weight, alone, to establish extreme cruelty pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); and (2) the letter from her employer did not carry sufficient evidentiary weight, alone, to prove good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). The director, therefore, on October 2, 2002, requested that the petitioner submit evidence to establish that she met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(E) and (F). The director listed examples of evidence the petitioner could submit to show that she had been the subject of extreme cruelty, and that she is a person of good moral character. The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition on March 31, 2003.

On appeal, the petitioner submits documents previously furnished with her self-petition and reviewed by the director. While the applicant, on appeal, asserts that she did submit the documents requested, there is no evidence in the record that any new additional evidence or documentation establishing extreme cruelty and good moral character were furnished as claimed.

Accordingly, the applicant has failed to establish eligibility for the benefit sought and to overcome the findings of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E) and (F).

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.