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**U.S. Citizenship
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B9



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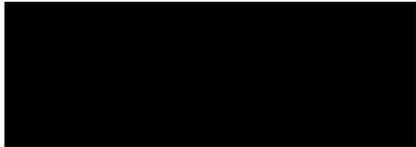


Office: VERMONT SERVICE CENTER

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.

Cindy M. Gomez fel
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 Jamaica 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 she entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that the director did not consider the content of the licensed therapist reports regarding the emotional, mental, and sexual abuses that she experienced during the marriage. She urges the director to conduct a *de novo* examination of the entire file for the battered spouse doctrine, mainly substantial abuse. She submits evidence previously furnished and addressed by the director.

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.

¹ On October 28, 2000, the President approved 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 so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show 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.

The record reflects that the petitioner entered the United States as a visitor on June 1, 1990. The petitioner married her United States citizen spouse on April 23, 1996, in New York. On April 1, 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.

8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director reviewed the evidence furnished to establish that the petitioner married her spouse in good faith, and determined that the evidence was insufficient. He noted that evidence of a bank account was "In Trust For" her spouse and was not a joint account, and that affidavits alone did not have sufficient detail upon which to make a positive decision. The petitioner was, therefore, requested on August 28, 2002, to submit additional evidence. In response, the petitioner furnished more affidavits. The director noted that it appears the affidavits contradict other statements in the record, or that the individuals making the statements were not in a position to speak credibly about the petitioner's marriage. Therefore, he concluded that the affidavits did not hold sufficient evidentiary weight to enable him to make a decision in the petitioner's favor.

The petitioner, on appeal, neither addressed nor submitted any evidence to establish that she married her citizen spouse in good faith. Furthermore, although the director listed examples of evidence that the petitioner could submit to show the existence of a good-faith marriage, the petitioner did not submit an explanation as to why such documentation is unavailable. Additionally, while the petitioner requests that the director conduct a *de novo* examination of the entire file, mainly, substantial abuse, the director did not find "extreme cruelty" to be lacking in this case.

It is noted in the record that this is the third Form I-360 petition the petitioner has filed. The first petition was filed on July 27, 2000, and that petition was denied on July 18, 2001; no appeal was filed based on that denial. The second petition was filed on July 27, 2001, and that petition was denied on December 24, 2001; again, no appeal was filed based on that denial. It is further noted that both denials were based, among other criteria, on the lack of evidence to establish that the petitioner married her citizen spouse in good faith. The petitioner had not overcome the findings of the director in both cases. Furthermore, the petitioner, in the present case, has failed to establish that she married in good faith, and to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

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.