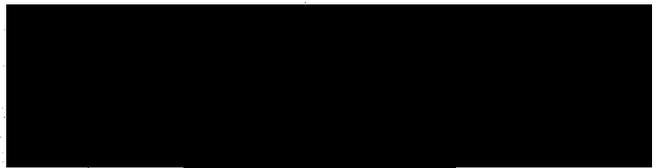


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]
EAC 02 175 52912

Office: VERMONT SERVICE CENTER

JUN 30 2004
Date:

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 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.

On September 18, 2003, the director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse; is a person of good moral character; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a statement.

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's first marriage to [REDACTED] ended in divorce on September 15, 1994. The petitioner was placed in exclusion proceedings on August 4, 1993 and was ordered excluded on May 27, 1994. On March 24, 1997, she wed [REDACTED] in Brooklyn, New York. The record reflects that on July 10, 1997, [REDACTED] a United States citizen, filed a Form I-130 petition on behalf of the petitioner. The petition was denied on September 26, 1997. According to the evidence on the record, the petitioner was placed in removal proceedings on March 22, 2001. On April 27, 2002, the petitioner filed a form I-360 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, which was denied. Simultaneously, on March 30, 2002, the U.S. citizen spouse filed a second form I-130 petition on behalf of the petitioner in this action, which was approved on August 13, 2002. The director denied the form I-360 self-petition. The petitioner has an immigration court hearing on July 6, 2004.

The director denied the petition, in part, finding that the evidence was insufficient to establish that the petitioner had resided with her citizen spouse. In review, the petitioner has overcome this objection of the director.

The next issue to be addressed in this proceeding is whether the petitioner established that she has been battered by or has been the subject of extreme cruelty perpetrated by her citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that she has been battered by, or the subject of extreme cruelty by her U.S. citizen spouse, the director requested that she submit additional evidence on October 16, 2002 and June 10, 2003.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

The evidence relating to the abuse is as follows:

- An affidavit from a friend [REDACTED] dated November 13, 2002, that states that the U.S. citizen spouse called the petitioner "stupid" and complained about her cooking.
- An affidavit of [REDACTED] an uncle of one of the petitioner's children, stating that he was present "many times" when the petitioner's husband mistreated her. He stated that on one occasion, the petitioner's husband told her that she was stupid and too old to dress up for Halloween.

- An evaluation prepared by a Certified Social Worker (CSW) dated July 11, 2002, that states that the petitioner is “deeply concerned about the quality of life since separating from her paramour in December 1999.” According to the CSW, the petitioner informed her that [REDACTED] became abusive shortly after her second child was born, and that he was verbally and physically abusive towards her.

It is noted that the CSW evaluation refers to the abuser as [REDACTED] the petitioner’s “paramour,” whereas the petitioner indicates that her husband [REDACTED] was the abuser. Even if the CSW was referring to the U.S. citizen spouse in question [REDACTED] the evidence is insufficient to establish that the petitioner has been battered by, or the subject of extreme mental cruelty by her citizen spouse.

The two affidavits submitted for the record fail to establish that the petitioner was subjected to battery or extreme cruelty. The harm complained of does not rise to the level described in the pertinent regulations.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

It is also noted that the petitioner failed to provide her own statement about the abuse she suffered and failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials. The petitioner did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the alleged abuse. The affidavits and evaluation are insufficiently specific as to the exact harm she suffered from her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director determined that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with affidavits of two friends that state that the petitioner lived with her citizen spouse. She submitted bills that list either the petitioner or her spouse as the responsible party. In the absence of evidence that the parties shared assets or liabilities except for one joint income tax return after seven years of marriage, the evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. On appeal, counsel for the petitioner asserts that the totality of the evidence establishes that the petitioner entered into her marriage in good faith. While it is noted that the petitioner's spouse filed a Form I-130 on her behalf that was approved by the director on August 13, 2002, the record reflects that the couple was never jointly interviewed by CIS. In review, the documentary evidence is insufficient to establish that the petitioner wed her husband in good faith.

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 several requests for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances, but she did submit her criminal history with the New York City Police Department.

According to the evidence on the record, the petitioner has the following criminal record:

- The petitioner was arrested on March 30, 1995 by the New York City Police Department. On July 14, 1995, she pled guilty to a charge of promoting gambling in the second degree (225.05)(Docket Number 95K027045). She was resentenced to pay a \$400 fine or serve 90 days.
- The petitioner was arrested on June 6, 1995 and pled guilty to promoting gambling in the second degree (225.05)(Docket number 95K044297). She was fined \$500.
- On June 16, 2000, the petitioner was arrested and charged on three gambling related counts. She pled guilty to violating PL 225.15 and was sentenced to 30 days or \$400 fine. (Docket 2000K050698).
- On June 7, 2002, the petitioner was arrested and charged with a felony, possession of a forged instrument in the second degree (PL 170.25)(Docket Number 2002QN023346). She pled guilty to possession of a forged instrument in the third degree, a misdemeanor, (PL 170.20) and was sentenced to pay a \$100 fine or ten days.

The director determined that because the petitioner had been repeatedly arrested for illegal gambling and because she had given false testimony for the purpose of obtaining immigration benefits, i.e., had indicated that she had never been placed in removal proceedings when in fact she had been ordered excluded, that she was statutorily ineligible to be a person of good moral character. 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—

(5) one who has been convicted of two or more gambling offenses committed during such period;

(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 has been convicted of at least three gambling offenses and is therefore statutorily barred from establishing that she is a person of good moral character for the purposes of the Act.

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.