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U.S. Citizenship
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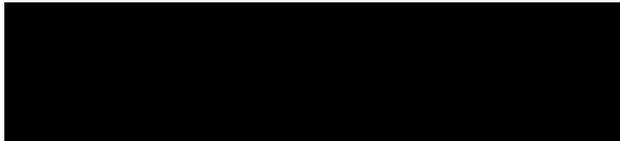


Office: VERMONT SERVICE CENTER

Date: MAR 30 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:



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 N. Momeny for

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 Cape Verde 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: (1) has resided with the citizen or lawful permanent resident spouse; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service [now Citizenship and Immigration Services (CIS)] improperly relied on statements of the abuser to make the determination that there was insufficient evidence of the good-faith marriage. She states that the statements made by a third party only demonstrate that the abuser maintained a separate residence, and that it does not mean they did not reside together, or that the marriage was not bona fide. Counsel states that the petitioner argues that she entered the marriage in good faith, and that if her husband did not have the same intention and she was not aware of that fact, the determination should be made based "on her state of mind." Counsel further states that as argued in the motion to reopen the director's decision, any statements made by the batterer in this case should be extremely suspect because he has a history of fraudulent statements and applications.

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

The record reflects that the petitioner arrived in the United States as a visitor on August 24, 1989. The petitioner married her United States citizen spouse on March 20, 1997 at Brockton, Massachusetts. On October 12, 2001, 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)(D) requires the petitioner to establish that she has resided with her U.S. citizen spouse. Additionally, 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith.

Section 204(c) of the Act states that no 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 or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The record of proceeding contains a CIS investigation report regarding the marriage of the petitioner and her spouse [REDACTED] based on an immigrant visa petition and adjustment of status filed on behalf of the petitioner. The investigation reflects that these two individuals were maintaining separate residences and had done so for the duration of the marriage. On January 18, 2001, Mr. [REDACTED] in a signed statement, admitted that he had never lived with the petitioner, and that he married the petitioner as a favor in order for the petitioner to obtain her "papers." Based on Mr. [REDACTED] statement, the petitioner's application for adjustment of status to permanent residence (Form I-485) was denied, and she was subsequently placed in removal proceedings.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to requests for additional evidence and in the motion to reopen the director's decision to deny the Form I-360 self-petition. That discussion will not be repeated here. He noted, however, that the petitioner provided a statement from Mr. [REDACTED] in an attempt to establish that the petitioner resided with Mr. [REDACTED] and that they entered into the marriage in good faith. The director maintained that since the sole piece of evidence submitted with the petitioner's response to the Service's intent to deny was the statement from her spouse, and that the petitioner now indicates that her spouse's adverse statements should not be considered because he is in the habit of making untruthful statements, it would be reasonable to assume that any statements made by her spouse should not be considered credible. The director further noted that the petitioner had not provided any other evidence to support her claim.

On appeal, counsel asserts that maintaining a separate residence does not mean that the petitioner and Mr. [REDACTED] did not reside together, and does not mean that the marriage was not bona fide. She reiterates that any statements made by Mr. [REDACTED] in this case should be extremely suspect because he has a history of fraudulent statements and applications.

Counsel, however, did not address the director's conclusion that since the petitioner indicated that Mr. [REDACTED] makes untruthful statements, any statements made by him should not be considered credible. Furthermore, no additional evidence was furnished to support the petitioner's claims that she had resided with her spouse and that she entered into the marriage in good faith.

The petitioner has failed to overcome either of the director's reasons for denial pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D) and (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.