



U.S. Citizenship
and Immigration
Services

B-9

[Redacted]

MAY 27 2004

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
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.

Cinder M. Gomez for

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 Russia 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 citizen of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner was cruelly abused by her citizen husband, and she was forced to apply for a restraining order against him. He states that the marriage was terminated because of ongoing abuse and that the petitioner's life was in danger. Counsel further asserts that the only reason the petitioner did not immediately apply for benefits under the Violence Against Women Act of 1994 (VAWA) was the fact that she was waiting for the decision of the Board of Immigration Appeals that was filed in August 1997, based on the district director's decision denying the petition for immediate relative filed on her behalf by her spouse. However, as soon as a final decision was entered and the petitioner was instructed to file the Form I-360 petition, she immediately filed the form. Counsel states that the Form I-360 should be accepted as the petitioner was mentally and physically abused by her U.S. citizen husband.

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

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.

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

The record shows that the petitioner entered the United States as a visitor on August 23, 1993. The petitioner married her United States citizen spouse on June 2, 1995, at Brooklyn, New York. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on March 25, 1998. On October 8, 2002, the petitioner filed Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

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 to read, in parts, as follows:

(I)(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.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and...

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse...

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse for more than two years prior to the filing of the self-petition. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date the Form I-360 self-petition is filed.

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and her citizen spouse divorced on March 25, 1998. It is noted that counsel states that the petitioner was awaiting the outcome of the decision of a previously denied Form I-130, Petition for Alien Relative, filed on her behalf by her spouse, that was being heard at the Board of Immigration Appeals. It was only upon being informed by the immigration officer during a subsequent

interview, as to her ineligibility as the beneficiary of that petition, did she realize that she could consider pursuing the filing of a self-petition due to the circumstances of her marriage. The petitioner did not file the self-petition until October 8, 2002, more than two years after the divorce was final. Nevertheless, there is no provision to allow for late filing under the statute and regulations governing this petition. Therefore, the petitioner has not overcome the findings of the director, and the petition must be denied.

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. The appeal will be dismissed.

ORDER: The appeal is dismissed.