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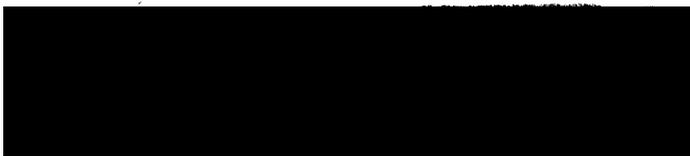
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BA

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

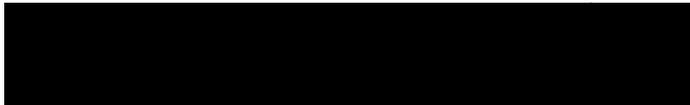


FILE  OFFICE: VERMONT SERVICE CENTER DATE: **NOV 09 2004**
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IN RE:

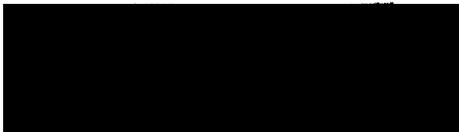
Petitioner:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and an appeal was subsequently rejected. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be granted and the petition will be denied.

The petitioner is a native of the former Soviet Union who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to submit evidence as had been requested to establish that she is a person of good moral character. The director, therefore, denied the petition on the sole basis that the petitioner had failed to establish that she is a person of good moral character. The AAO rejected an appeal as untimely filed. In review, the AAO should have treated the appeal as timely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). If the final date falls on a Saturday, Sunday or legal holiday, it is extended to the next business day. In the instant case, the director denied the petition on September 9, 2003. The thirty-third day of the date of the decision is Sunday, October 12, 2003. Monday, October 13, 2003 was a legal holiday. The Citizenship and Immigration Services (CIS) received the appeal on October 14, 2003. Since the final date fell on a Sunday, and the next day was a legal holiday, the petitioner's appeal was timely filed on Tuesday, October 14.

On motion, counsel for the petitioner asks AAO to reconsider its decision and allow the appeal to proceed for a decision on the merits. The motion is granted.

The regulation at 8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, 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 child; and

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

The record reflects that the petitioner married her lawful permanent resident spouse, [REDACTED], on February 23, 1999, in Pennel, Pennsylvania. The record further reflects that the petitioner's husband was arrested and charged with assault and endangerment because he threw the petitioner and their child out on the edge of a highway. The record further reflects that the petitioner's spouse initiated divorce proceedings in January 2001. On June 5, 2002, the petitioner filed a 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 lawful permanent resident spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition.

Because the director determined that the petitioner had failed to establish that she was a person of good moral character, the director requested evidence of her good moral character. The director indicated that the petitioner could submit: her own affidavit supported by police clearances or records from each place she resided for at least six months during the 3-year period before filing the petition. The director stated that if police clearances, criminal background checks or similar reports were not available, she should submit an explanation and submit other evidence to support her affidavit such as affidavits from responsible persons who could knowledgeably attest to her good moral character.

On appeal, the petitioner submits a statement from her employer.

In review, an employer's statement is insufficient evidence in the absence of an explanation as to why police clearances, criminal background checks or similar reports are not available for some or all locations where the petitioner resided for at least six months in the 3-year period preceding the filing of the petition. 8 C.F.R. § 204.2(c)(2)(v).

ORDER: The appeal is dismissed.