



U.S. Citizenship
and Immigration
Services

157

[REDACTED]

FILE: [REDACTED]
EAC 02 183 52220

Office: VERMONT SERVICE CENTER

Date: OCT 26 2004

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:

[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Romania 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 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.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, because according to the evidence on the record, the petitioner had divorced the alleged abusive spouse prior to the filing of the petition and remarried during the pendency of the Form I-360 petition.

According to the evidence on the record, the petitioner married her U.S. citizen spouse, [REDACTED] on March 27, 1999 in Tismisoara, Romania. On the Form I-360, the petitioner indicated that they lived together for two months in Romania. The evidence further indicates that the petitioner initiated divorce proceedings in

Romania and that the marriage was terminated on March 3, 2001. The evidence further indicates that the petitioner remarried another United States citizen, ██████████ in Forest Grove, Oregon on March 7, 2001. ██████████ filed a Form I-130 petition on the petitioner's behalf but according to the director, the petition was denied. The petitioner filed the Form I-360 self-petition on May 2, 2002. According to Citizenship and Immigration Services' records, the petitioner was placed in removal proceedings on February 9, 2000 and is scheduled for a hearing on November 23, 2004 in Portland, Oregon.

On appeal, counsel for the petitioner asserts that the director's decision denying the Form I-360 petition is not supported by the statute. Counsel further asserts that there is no prohibition against approval of an I-360 petition where the applicant is remarried to someone other than the abusive spouse prior to approval.

We are not persuaded by counsel's argument. Section 204 of the Act, as amended, does not provide that remarriage before the self-petition is filed or approved is permitted. There is no provision for the approval of such a self-petition. Section 204(h) of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title." Congress specifically considered that remarriage of an abused spouse would not terminate eligibility once a petition had been approved; by implication, remarriage before filing the Form I-360 petition does terminate eligibility.

Congress's goal in enacting the Violence Against Women Act of 1994 (VAWA) was to eliminate barriers to women leaving abusive relationships. H.R. Rep. No. 103-395, at 25 (stating that the goal of the bill is to "permit[] battered immigrant women to leave their batterers without fearing deportation"). While the spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, Congress found the Act failed to protect all that it intended to protect, including divorced battered immigrants and children who were abused before the age of 21. In a hearing before the Subcommittee on Immigration and Claims, Congresswoman Jackson-Lee discussed those people for whom VAWA was created to protect. The Congresswoman stated:

The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser . . . I can say that unfortunately, our job, as lawmakers, is not yet done. Our intent in 1994 was to provide battered immigrants with meaningful access to lawful immigration status, thus allowing them to safely leave their abusers. Nevertheless, we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status . . . [D]ivorced battered immigrants do not have access to VAWA immigration relief. There are many "savvy" abusers who know that if they divorce their abused spouse they will cut off their victim's access to VAWA relief. H.R. 3083 allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce.¹

Clearly, the petitioner is not the type of battered immigrant woman with whom Congress was concerned with protecting when enacting VAWA or BIWPA as, after the petitioner's divorce from her abusive spouse, she remarried another United States citizen.

¹ *Battered Immigrant Women Protection Act of 2000, (BIWPA): Hearing on H.R. 3083 Before the House Subcommittee on Immigration and Claims, 106th Cong. (2000)(statement of Congresswoman Jackson-Lee).*

Beyond the decision of the director, the petitioner has not established that she is a person of good moral character. The record of proceeding contains the petitioner's arrest and court records. Therefore, the petition may not be approved for this additional reason.

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.

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