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U.S. Citizenship
and Immigration
Services



FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 27 2004**

EAC 03 048 53732

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

GM Robert P. Wiemann, Director
Administrative Appeals Office

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prevent disclosure of information
warranted by privacy

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DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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.

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner asserts that the director erred and the Form I-360 petition should be approved.

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 or her 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.

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.

The record reflects that the petitioner wed United States citizen [REDACTED] 23 years senior to the petitioner in age. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. Action was terminated on the Form I-130 petition. On November 29, 2002, 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character and entered into the marriage in good faith, she was requested on August 27, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she married her spouse in good faith, and that she is a person of good moral character.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence, and found that the petitioner had submitted insufficient evidence to establish that she had entered into the marriage in good faith. The discussion will not be repeated here.

On appeal, counsel for the petitioner asserts that the director erred and that it is very difficult to provide evidence that the petitioner entered into the marriage in good faith because her husband prohibited her from leaving the house on many occasions. Counsel for the petitioner suggests that if the petitioner established that she was a victim of abuse, she has established that she married in good faith.

The director determined and the AAO concurs 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). 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 friends that indicate that the petitioner and her husband were "a couple." She provided CIS with several photographs of the petitioner and her spouse. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

It is noted that the petitioner failed to submit insurance policies in which the petitioner or her spouse is named as the beneficiary. She failed to submit bank statements, tax records or their documents showing that she and her husband shared accounts. She failed to submit evidence of their courtship, wedding ceremony and residence. She provided no evidence that she and her husband owned property jointly. No children were born of the marriage. The petitioner's own statement is devoid of any description of her courtship, marriage and life with her spouse. Accordingly, the record does not establish that the petitioner entered into her marriage in good faith.

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.