



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

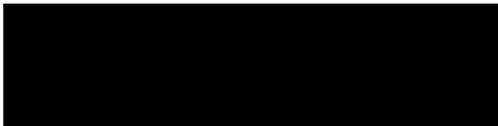
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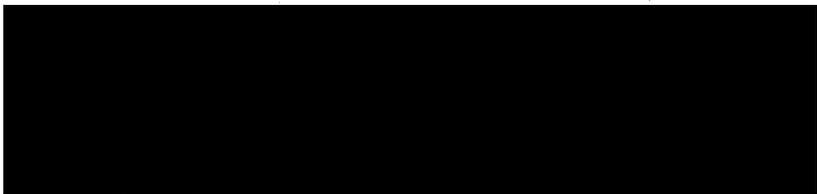
Petitioner:



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.

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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a native and citizen of Mexico 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 after determining that the petitioner had failed to establish that he is a person of good moral character.¹

On appeal, counsel for the petitioner submits a statement and additional evidence.

The regulation at 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 child;² and

¹ Although the director initially indicated the petitioner failed to establish a good faith marriage, he did go on to specifically discuss the petitioner's good moral character, not the good faith marriage.

² 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 reflects that the petitioner entered the United States on July 14, 2003 as a K-1 nonimmigrant. Prior to his entry into the United States, the petitioner resided in Mexico. The petitioner married his United States citizen spouse, [REDACTED] on July 25, 2003, in Cambridge, Massachusetts. On December 18, 2003, the petitioner filed the instant self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, he was requested on September 7, 2004 to submit evidence to establish that he is a person of good moral character. The request for evidence issued by the director stated, in pertinent part:

Submit evidence of your good moral character. The following may be submitted:

1. Your own affidavit supported by police clearances . . . or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

In response, the petitioner submitted a letter from the Massachusetts Executive Office of Public Safety, which indicates that the petitioner has no adult criminal history.

As it relates to evidence of the petitioner's good moral character from Mexico, counsel for the petitioner submitted a statement and information from an official at the Mexican consulate in New York City, indicating that it is not possible to obtain the requested police clearance in Mexico and that such requests must be made from government to government, not by individuals.

Despite the director's instruction that "if police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit," and the petitioner's submission of the police clearance from Massachusetts, as well as the information obtained from the Mexican consulate, the director denied the petition on December 22, 2004, stating that the petitioner failed to submit the requested police clearance and finding the record does not contain sufficient evidence to demonstrate the petitioner's qualification.

The petitioner, through counsel submitted a timely appeal on January 25, 2005 and requested an additional 90 days in which to submit evidence. Counsel states:

In the original self-petition and in response to the Notice of Action, we attempted to and were unable to obtain this [police clearance] certificate. We were informed by the Mexican Consulate . . . that an individual cannot request this information . . . Although we believe the previous submissions are sufficient to demonstrate good moral character, we are attempting once again to obtain a criminal record certificate from Mexico . . . [The petitioner] is in contact with his family in Mexico and is trying to have the necessary fingerprints and other data properly notarized and sent to Mexico for processing

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Due to the above difficulties in obtaining the certificate, and the slower functioning of the mails in Mexico, we anticipate we will need at least 90 days to submit the Certificate of Non-Criminal Record from Mexico.

We note that although the regulations do not allow the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed, in this instance, good cause has been shown for the filing of additional documentation beyond the initial 30 days allowed.

On April 27, 2005, counsel submitted a "Certificate of No Criminal Record," dated June 9, 1997, from Cuernavaca, Morelos, Mexico indicating that the records of that state show no criminal records for the petitioner. Counsel acknowledges that the certificate does not cover the three-year period prior to the filing of the petition and requests additional time to obtain an updated certificate from the petitioner's family in Mexico.

In reviewing this case, we referred to the Department of State's website, which contains the most recent reciprocity schedules and information regarding the availability of documents. The "Visa Reciprocity and Country Documents Finder" for Mexico states, in pertinent part:

DOCUMENTS

In the Republic of Mexico the maintenance of public records and the issuance of certificates fall within the jurisdiction of the 31 States and the Federal District (Distrito Federal), which comprise the Republic. An exception applies to military certificates, which are issued by the Secretaria de la Defensa Nacional (Ministry of National Defense) or by the Secretaria de Marina (Ministry of the Navy.)

The rules and regulations regarding the maintenance of public records and the issuance of certificates in the 31 states are similar, with slight modifications to those prevailing in the Federal District. Non-residents are strongly urged to use the Spanish language in their correspondence with Mexican authorities. In order to avoid undue delay, they may also find it advisable, if feasible, to enlist the aid of a resident of Mexico to secure a copy of a public record.

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POLICE RECORD

Unavailable.

Based upon the above discussion, we find the director's decision regarding the petitioner's lack of good moral character cannot be supported. However, upon further review, we find the record does not contain sufficient evidence to support a finding that the petitioner was battered or subjected to extreme cruelty, that he entered into his marriage in good faith, or that he resided with his spouse.

As it relates to the claimed abuse, the record consists of two statements from the petitioner. The petitioner's claim is based upon the assertion that his wife would "interrogate" him about what he was doing and where he was, that she called him names such as "leach," "louse," and "worm," and that she would yell at him and tell him that he ate too much. The petitioner claims that on one occasion, his spouse scratched him and "left three scars that are still clearly visible." The petitioner does not provide any documentary evidence such as photographs or medical records to establish this injury and does not submit documentation from the police or court officials or any supporting statements from witnesses attesting to any of his claimed abuse.

As it relates to residence and good faith marriage, the record consists of:

- The petitioner's statements.
- The petitioner's marriage certificate.
- Photocopies of three envelopes and several notes from the petitioner's spouse to the petitioner.

In his initial statement, the petitioner indicated that in June 2001 he met his wife in a "chat room," and that in November 2002 his wife came to visit him and they decided to get married. The petitioner gives no specific details about his courtship or of his life after marriage, such as where they lived together. In his second statement, the petitioner offers greater details, but fails to provide documentary evidence to support his claims of a good faith marriage and that he resided with his spouse. For instance, although the petitioner claims that he moved into his spouse's apartment in Cambridge and submits two envelopes addressed to the petitioner and his spouse at [REDACTED] the petitioner does not provide a lease or an addendum to his spouse's existing lease to demonstrate their joint residence. The fact that the petitioner may have received mail at a particular address is not conclusive evidence that he lived at that address. The record also lacks documentary evidence, such as joint insurance information (health, car, and/or renters'), bank statements, credit cards, or utility bills to demonstrate the commingling of assets and liabilities one would expect to see in a bona fide marriage.

While we have reversed the director's single stated ground for denial, the record remains lacking evidence of other eligibility factors. Specifically, the record does not support a finding that the petitioner was battered or subjected to extreme cruelty, that he entered into his marriage in good faith, and that he resided with his spouse. The matter, therefore, will be remanded to the director for further consideration. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for action consistent with the above discussion and entry of a new decision.