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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 22 2005
EAC 04 064 51527

IN RE: Petitioner: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 United States citizen.

The director denied the petition, finding that the petitioner had failed to establish that she has a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon this relationship. Specifically, the director determined that the petitioner failed to provide evidence of the termination of all her marriages prior to the qualifying marriage.

The petitioner submits a timely appeal and is represented by counsel.[1] The sole issue to be determined on appeal is whether the petitioner has established that she has a qualifying marriage as the spouse of a United States citizen and whether she is eligible for classification based upon that marriage.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 [Secretary of Homeland Security] 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) 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;

[1] We note that two appeals from the director's decision were filed with the AAO. The first appeal, dated January 12, 2005, was filed by the petitioner at 5:55 a.m. The second appeal, also dated January 12, 2005, was filed by [redacted] for the petitioner at 9:45 a.m. Although the petitioner's Form I-290B was filed first, because the latter I-290B indicated that the petitioner was represented by counsel on appeal, we will accept the petitioner's Form I-290B and acknowledge counsel's representation.

(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;

* * *

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

The record reflects that the petitioner married United States citizen, in Chicago, Illinois on April 20, 2001. On May 21, 2001, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner concurrently filed a Form I-485 application on that same date. The Form I-130 petition and the Form I-485 application were denied on February 9, 2004.

The petitioner filed the instant self-petition on December 29, 2003, 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. On the Form I-360, the petitioner indicated that she has been married three times.[2]

The director issued a request for evidence on September 9, 2004, and requested, in part, "proof of the legal termination of the marriage(s) of you and your previous spouses." We note that at the time of the director's request, the record already contained copies of the termination of the petitioner's prior marriages. Specifically, the record contained a copy of the petitioner's March 14, 1996 divorce decree from with translation, and a copy of the petitioner's April 11, 2001 divorce decree from Accordingly, the portion of the director's request for evidence related to the petitioner's prior marriages and the director's denial based upon the petitioner's failure to establish a qualifying relationship was in error.

Given that the record contained sufficient evidence to substantiate the petitioner's claim of a good faith marriage, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her United States citizen spouse, and that she is a person of good moral character, the director found the petitioner had meet these eligibility requirements.

As it relates to the petitioner's claim of a good faith marriage and that she resided with her spouse, we note that the record contains copies of rental agreements, bank statements, tax documents, and insurance information showing that the petitioner and her spouse has shared assets and liabilities as well as a joint address.

As it relates to the petitioner's claim of abuse, the petitioner has submitted a detailed personal statement describing incidents of battery and extreme cruelty. Her statement is corroborated by independent and credible

[2] This information is consistent with the information provided on the Form I-130 filed in the petitioner's behalf where it was indicated that prior to the qualifying marriage, the petitioner had been married to

evidence such as a police report, an emergency order of protection, a letter from a domestic violence court advocate who indicates an active criminal case against the petitioner's spouse for misdemeanor domestic battery against the petitioner and a psychological report.

Finally, as evidence of the petitioner's good moral character, the petitioner submitted an affidavit attesting to her good moral character, supported by a police clearance indicating that the petitioner has no record.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.