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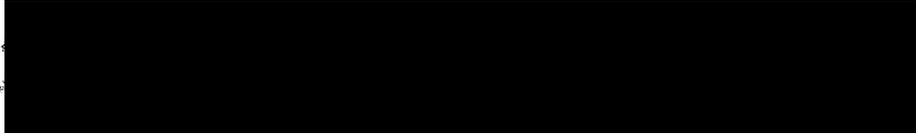
FEB 14 2005

FILE: [Redacted]
EAC 03 058 55102

Office: VERMONT SERVICE CENTER

Date:

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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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 Colombia 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 had entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief.

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 entered the United States on a K-1 fiancée visa on May 6, 1999. The petitioner wed United States citizen [REDACTED] 21 years her senior, on July 30, 1999 in New Haven, Connecticut. The petitioner filed a Form I-485 application on November 20, 2000. The petitioner's spouse wrote legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) to "withdraw his Form I-485 application" and to inform CIS that he had commenced divorce proceedings. Action was terminated on the Form I-485 on June 13, 2002. On December 12, 2002, the petitioner filed a Form I-360 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 U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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. The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she entered into the marriage in good faith and had terminated her prior common law marriage, the director requested that she submit additional evidence in a Notice of Intent to Deny (NOID). The petitioner responded to the NOID by requesting an additional 60 days in which to respond. The director granted the petitioner another 60 days to respond to the NOID. The director listed evidence the petitioner could submit to establish that she married her spouse in good faith, 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 NOID and request for additional evidence.

On appeal, counsel for the petitioner submits a brief.

In review, the evidence is insufficient to establish that the petitioner entered into the marriage in good faith. The evidence consists of the following:

- The petitioner's statements.
- The statements of six friends of the petitioner who reside in Colombia.

- An affidavit of [REDACTED] a former employee of the petitioner's spouse.
- An affidavit of [REDACTED] a client of the petitioner and her spouse's dating service, latinwomenconnection.com.
- Evidence that the petitioner was vice president of one of her husband's companies, Venterprises, Inc.
- Evidence that the petitioner and her spouse had a joint business account at Webster Bank.
- Evidence that the petitioner and her husband jointly owned a 1986 Mercury.
- Unsigned copies of joint federal tax returns for 1999 and 2000.
- Photographs of the petitioner and her citizen spouse.

The director determined and the AAO concurs that the petitioner failed to establish that she entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). It is noted that there is a 21-year age differential between the petitioner and her citizen spouse. It is further noted that the petitioner's spouse has been married and divorced on three occasions and that he divorced his second wife only six months prior to marrying the petitioner. Although a child was born of the marriage, it is established that the petitioner's spouse is not the child's biological father. The joint tax returns submitted to CIS are unsigned. Photographs are not persuasive evidence of the bona fides of a marriage. The affiants primarily relay information provided to them by the petitioner. Given that the majority of affiants reside in Colombia, it is difficult for CIS to confirm the information provided by the affiants. In the absence of more corroborating evidence such as insurance policies in which the petitioner or her spouse is named as the beneficiary, bank statements showing activity on joint accounts, evidence of a wedding celebration, and evidence of joint ownership of real estate, the evidence is insufficient to establish that the petitioner married her citizen spouse in good faith.

On appeal, counsel for the petitioner asserts that the petitioner has met her burden of proof and suggests that the director erred in considering the fact that the petitioner had extra-marital affairs as a serious adverse factor.

In review, it is noted that the petitioner indicated that she and her husband each had extramarital affairs during the honeymoon, taken shortly after they wed and that she became pregnant with another man's child during the honeymoon. While not dispositive as to the bona fides of the marriage, these are facts that add weight to the director's decision.

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.