U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 08 2004

IN RE: Petitioner:
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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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

The petitioner is a native and citizen of the Philippines 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 submit evidence, as had been requested, to establish eligibility for the benefit sought.

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

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[1]; and
> >
> > (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner arrived in the United States as a nonimmigrant visitor for business on April 5, 1991. The petitioner married her alleged United States citizen spouse on August 8, 1998 at Reno, Nevada. On

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[1] 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 to enable an alien self-petitioner claiming to qualify for immigration benefits as the battered spouse or child of a U.S. citizen to no longer be required to demonstrate 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.

November 5, 2001, 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 spouse during their marriage.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, she was requested on March 8, 2002, to submit evidence to establish that (the petitioner's spouse) is a United States citizen. The marriage certificate furnished indicates that the person the petitioner married was but the certificate was signed by The petitioner was, therefore, requested to explain this discrepancy. The petitioner was also requested to submit proof of the legal termination of the prior marriage(s) of explain the circumstances of her former marriage to , submit evidence to establish that she had resided with her alleged U.S. citizen spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), and to submit evidence to establish that she entered into the marriage in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition on July 22, 2002.

On appeal, the petitioner asserts that she is diabetic and is scheduled for surgery on both eyes in September 2002, and that she is also scheduled for surgery in October for hip replacement. The petitioner states that due to her present condition, she is strongly pleading that her petition be approved and that she be permitted to stay in this country. She submits the following:

1. A statement from the petitioner, dated August 15, 2002, indicating that her husband had always used two names, that they are one and the same person, and that during the course of their conversation, her spouse mentioned to her that he was born on May 25, 1938, in the State of Louisiana. She further states that she is unable to provide the divorce decrees of her husband's previous marriages because she never had access to any important documents during their marriage. In explaining the circumstances of her former marriage to the petitioner states that she and were married on December 26, 1961 and that they have four children, but that she left him in 1986 for not providing financial support to the family.

2. A statement from dated April 17, 2002, indicating that she has personally known Mr. as they both live in the same neighborhood, and that she has known that and the petitioner lived together as husband and wife for a number of years. stated that "without my knowledge or falsely married [the petitioner].' however, failed to explain the basis of her inference of a marriage fraud.

3. An undated statement from ndicating that she personally knows tha is one and the same person a who resides at n Richmond, California, and that she had visited the petitioner at their residence on several occasions failed to list her address, nor did she indicate on the statement the time period during which she visited the petitioner.

4. An undated hand-written note from indicating that she went to California to visit her family, and she met the petitioner during the visit. She further indicates that the petitioner is married to her uncle, d to list her address, nor did she indicate the date or dates she visited the family in California.

5. An electronic message dated April 25, 2002, from addressed to advising her that and are one and the same person, he is not really his brother but a good friend, and that he was told by that he had two names from birth. He further states that was born in the State of Louisiana; however, he does not know where in Louisiana.

None of the statements listed above are sworn to or notarized, nor are they in affidavit forms as required by 8 C.F.R. § 204.2 and 8 C.F.R. § 103.2(b)(2). Further, none of the affiants indicate how they know that Mr. and Mr. are one and the same person, nor did they indicate what name he used during the time of their respective acquaintances. Additionally, the statements are not supported by any documentary evidence.

The petitioner has failed to provide sufficient evidence to establish that are one and the same person. She also failed to provide evidence that she attempted to obtain proof of the legal termination of the prior marriage(s) of Furthermore, while the petitioner indicates that Mr. mentioned to her the date and place of his birth, no evidence was furnished to show that the petitioner had attempted to obtain a birth certificate from the State of Louisiana. Accordingly, the petitioner has failed to overcome these findings of the director.

It is noted that the record of proceeding contains copies of two statements from

1. In a hand-written statement, dated July 31, 1996, stated that he knew the petitioner when he was in the Philippines, and that when she came to the United States on April 20, 1991, they became closer and better friends. He further stated that the petitioner had supported him off and on since she found out he was hurt on the job.

2. In an affidavit dated December 2, 1996, stated that he knew the petitioner "when she was in the Philippines and we have been reacquainted since she came to this area April 20, 1991." He further stated that he was hurt on the job and now permanently disabled, and "she has supported my moral and assisted me with my day to day function. I have been supporting her financially."

The statements made by are inconsistent with the petitioner's statement dated August 13, 2001, furnished with her Form I-360, Petition for Amerasian, Widow or Special Immigrant, in which she stated that upon arrival in California, she found employment in different care facilities in the area as a care-giver, and that "[w]hile working in one of the care facilities in the city, I have met a friend of mine who did introduce me to whom she had known him for years." The inconsistencies of the evidence render the petitioner's claim to be less than credible. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho,* 19 I&N Dec. 582 (BIA 1988).

Furthermore, even if the petitioner and Mr. did, in fact, reside together as claimed by the petitioner and the affiants pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), the petitioner has failed to submit any evidence to establish that she entered into the marriage to the U.S. citizen in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

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.