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

U.S. Citizenship
and Immigration
Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 14 2005
EAC 03 091 53522

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petitioner 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.

Marc Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director of the Vermont Service Center denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) 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, finding that the petitioner failed to establish that she resided with the citizen spouse and entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a brief.

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; and
> >
> > (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 October 16, 1991 as a B-2 nonimmigrant visitor. The petitioner filed an application for asylum that was denied on December 4, 1995. The petitioner was placed in removal proceedings on December 21, 1995. The petitioner married [redacted] a U.S. citizen,

on August 31, 1996 in Reno, Nevada. The immigration judge granted the petitioner's request for relief by adjusting her status to conditional resident on December 15, 1997. On December 9, 1999, the petitioner filed a petition to remove conditions on residence. On February 20, 2002, the petitioner and her spouse were interviewed in connection with that petition and on October 25, 2002, the district director denied the petition, because it was determined that the marriage was entered into solely to obtain immigration benefits. On January 25, 2003, 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)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

The director reviewed and discussed the evidence furnished by the petitioner to establish eligibility for the benefit sought, including documents contained in the petitioner's record of proceeding. The director determined that the petitioner had failed to establish that she had resided with her spouse and that she entered into the marriage in good faith. The AAO concurs.

The director concluded that the petitioner failed to establish that she qualifies for the benefit sought because she was previously denied removal of conditions on residence in 2002 based on Citizenship and Immigration Services (CIS) finding that the petitioner had not proven that her marriage was bona fide from its inception. She concluded and the AAO concurs that the petitioner is subject to section 204(c) of the Act, and failed to establish by clear and convincing evidence that she entered into the marriage in good faith.

Section 204(c) of the Act provides, in part:

> [N]o petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws....

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides, in part:

> Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

On appeal, counsel for the petitioner asserts that the petitioner has met her burden of proof.

As proof to satisfy the requirement that the petitioner resided with her spouse, she submitted a joint lease for beginning August 1, 1996 and rent receipts dated August 1, 1996 and September 1, 1996.[1] The petitioner also submitted her own affidavit in which she indicated that after her marriage, her husband lived with his sister in Manteca, California and the petitioner lived across the bay, 40 miles away, in San Francisco, California. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. 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).

To establish that she married in good faith, the petitioner submitted evidence that she filed federal income tax returns in "married filing separate" status. She submitted phone bills indicating that many calls were placed to Manteca, California from a San Francisco, California number. She provided CIS with photographs of the petitioner and her spouse. She also submitted a letter from her husband's employer dated December 16, 1996, indicating that the petitioner was named as the beneficiary for her husband's life insurance policy. She submitted an emergency notification form that her husband supplied to his employer indicating that in case of an emergency, his employer should notify the petitioner. She also submitted affidavits stating that the petitioner and her husband lived apart in order to keep their jobs but that they spent weekends together. She failed to submit documentation showing joint ownership of property. She failed to submit documentation showing commingling of financial resources. No children were born of the marriage. The evidence is insufficient to establish that she married her spouse 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.

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[1] It is noted that the two receipts. Dated August 1, 1996 and September 1, 1996, are numbered consecutively 0217 and 0218, suggesting that receipts were issued to the petitioner alone.