U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] EAC 03 010 53512 Office: VERMONT SERVICE CENTER Date: JAN 2 6 2005

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:

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.

Marin 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 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, 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 and resubmits an affidavit of the petitioner and a police report.

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.

Section 204(g) of the Act provides as follows:

> Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a two-year period beginning after the date of the marriage.

Section 245(e), paragraphs (2) and (3) provides:

> (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter ore remain in the United States.
>
> (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant . . . .

The record reflects that the petitioner entered the United States without inspection on October 31, 1996 and was served with an Order to Show Cause. The petitioner was placed in removal proceedings on November 15, 1996 and subsequently wed U.S. citizen [redacted] n June 3, 1997 in Yuma, Arizona. On August 15, 1997, [redacted] filed a Form I-130 on the petitioner's behalf. On August 18, 2000, 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 (EAC0025650422). The director denied her initial Form I-360 on January 13, 2001. The petitioner filed a motion to reopen on February 15, 2001, which was denied on February 27, 2001. The petitioner filed the instant Form I-360 on October 7, 2002. Removal proceedings were administratively closed on July 22, 2003.

Because the petitioner furnished insufficient evidence to establish that she had entered into the marriage in good faith, the director asked her to submit additional evidence on September 8, 2003 to establish that she had resided with her spouse, and married her spouse in good faith. On March 11, 2004, the director issued a second request

for evidence (RFE) to the petitioner, requesting court documents and her own statement regarding the incident of January 2, 2000 in which both the petitioner and her husband were charged with domestic violence and assault. In the second RFE, the director noted that because the petitioner wed her spouse while she was in removal proceedings, she was required to request a bona fide marriage exemption and to establish by clear and convincing evidence that she entered into the marriage in good faith and not entered into for the purpose of procuring an immigration benefit. The director listed evidence the petitioner could submit to establish that she married her spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits a brief, asserting that the lack of evidence relating to shared bank accounts, lease agreements and tax returns, should be considered in the context of an abusive relationship. Counsel asserts that it is unreasonable to expect the abused to have such evidence to show a good faith marriage exemption.

Counsel's assertion is not persuasive. The petitioner bears the burden of proof to establish by clear and convincing evidence that she married her citizen spouse in good faith. At a minimum, affidavits of friends and family could have been submitted to verify her relationship with her spouse. In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided the director with her own statement. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

Beyond the decision of the director, the petitioner has failed to establish that she is a person of good moral character. According to the evidence on the record, the petitioner made a false claim of U.S. citizenship to gain entry into the United States, hence she is statutorily ineligible to be found to be a person of good moral character. *See* Section 101(f) of the Act, 8 U.S.C. § 1101(f). For this additional reason, the petition may not be approved.

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.