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

PUBLIC COPY

[redacted]

FEB 25 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 220 52577

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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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 Uzbekistan 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 found that he could not make a determination on the petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, because the petitioner failed to respond to a request for additional evidence (RFE).

On appeal, counsel for the petitioner asserts that he and the petitioner did not receive the director's RFE. On appeal, counsel submits additional evidence.

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 record reflects that the petitioner wed United States citizen on July 12, 2000 in New York City, New York. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner on April 27, 2001. On June 15, 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 director determined that the petitioner had furnished insufficient evidence to establish that her husband had divorced his prior wives before marrying the petitioner. He further determined that the petitioner failed to establish when she and her citizen spouse divorced, whether she married her spouse in good faith, and whether she is a person of good moral character; hence, on December 12, 2002 he requested that she submit additional evidence. The director listed evidence the petitioner could submit to establish proof of the termination of her husband's previous marriages, of her own marriage, that she married her spouse in good faith and that she is a person of good moral character. The director sent the RFE to the petitioner in care of her attorney of record at an incomplete address. The petitioner and her attorney failed to respond to the RFE within 60 days as requested. It appears that the petitioner and her attorney subsequently received the RFE, because counsel submits a copy of the RFE on appeal.

On appeal, counsel for the petitioner states that the RFE was never received either by the petitioner or her representative and that the sole basis for the RFE was a request for proof of the termination of the petitioner's previous marriage to her citizen spouse. Counsel is mistaken. The RFE requested evidence on several issues, not simply proof of termination of the previous marriages.

On appeal, the petitioner submits a copy of a certified divorce decree showing the termination of the petitioner's marriage to her citizen spouse on March 18, 2002. This document will be included in the record of proceedings.

The petitioner has overcome one of the director's objections to approving the petition. The evidence on the record is sufficient to establish that her citizen spouse had terminated his prior marriages before he wed the petitioner and that she had been married to the allegedly abusive spouse within two years of the filing of the petition.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). As initial evidence, the petitioner submitted her own statement as to the bona fides of her marriage. She stated that she began living with Danilov in July 1998 and they wed in July 2000. She said that they lived together in New York and that she used to love her husband very much. She provided no information about how she met her husband, their courtship or wedding.

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. On appeal, the petitioner failed to submit additional evidence related to this issue. She failed to submit bank statements or tax records to show that she and her husband shared accounts and other similar responsibilities. She failed to submit evidence of her courtship, wedding ceremony or shared special events. She provided no evidence that she and her husband jointly owned property. No children were born of the marriage. She failed to submit affidavits of friends and family who could provide specific information verifying her relationship with her spouse. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In an RFE, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances. The petitioner failed to establish that she is a person of good moral character.

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.