

identify information deleted to  
prevent disclosure of warrant  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

139

APR 11 2005



FILE:



Office: VERMONT SERVICE CENTER

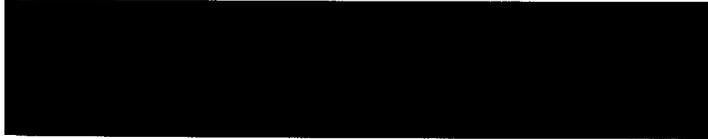
Date:

EAC 04 010 53377

IN RE:

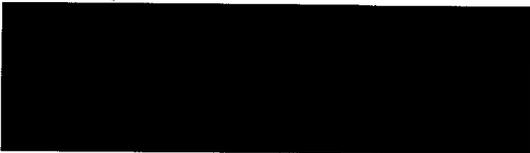
Petitioner:

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.

*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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Canada 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 citizen of the United States.

The director determined that the petitioner failed to submit evidence as had been requested to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel for the petitioner submits a police clearance from the Washington State Patrol.

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 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;

\* \* \*

(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.

According to the evidence on the record, the petitioner married U.S. citizen [REDACTED] on March 10, 2001 in Las Vegas, Nevada. The petitioner's citizen spouse filed a Form I-130 petition on the petitioner's behalf on September 29, 2001. The petitioner filed a Form I-485 application concurrently with the Form I-130. The district director denied the Form I-130 on May 29, 2003 due to abandonment. On September 19, 2003, the district director denied the Form I-485 petition. On October 15, 2003, the petitioner filed a 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 citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition.

Because the record contained insufficient evidence to establish that the petitioner resided with her citizen spouse, had been battered by, or subjected to extreme cruelty by her citizen spouse, is a person of good moral character and entered into the marriage in good faith, on March 22, 2004, the director requested the petitioner to submit additional evidence. The director listed the evidence the petitioner could submit to establish that she had resided with her spouse, that she had been battered or subjected to extreme cruelty by her citizen spouse, her own good moral character, and that she married her citizen spouse in good faith. Although the petitioner responded to the request for additional evidence, she failed to submit her own affidavit supported by police clearances. Instead, she submitted a letter of recommendation from an employer [REDACTED]. Because the petitioner failed to submit police clearances, or an explanation if clearances were unavailable, the director denied the petition.

On appeal, the petitioner submits her own affidavit supported by a police clearance from the state of Washington. It is noted that although she was requested to obtain police clearances for each place she resided for at least six months during the three-year period preceding the filing date of October 15, 2003, she failed to submit clearances for the period of time she resided in Canada.<sup>1</sup>

Nonetheless, the Board of Immigration Appeals, in *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), held that where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it

<sup>1</sup> According to a Form G-325A, the petitioner resided in Canada until August 2001.

for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose. Accordingly, the appeal will be adjudicated based on the record of proceedings before the director.

The evidence on the record before the director is insufficient to establish that the petitioner is a person of good moral character. The evidence is limited to a letter dated May 2, 2004, from the petitioner's employer, attesting to the petitioner's good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) clearly states that the petitioner must submit police clearances, or if unavailable, an explanation as to why such clearances are unavailable. The petitioner failed to submit any police clearances until on appeal.

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.

This decision is without prejudice to the filing of a new self-petition.

ORDER:       The appeal is dismissed.