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



U.S. Citizenship
and Immigration
Services



BP

FILE: [REDACTED]
EAC 03 0445 2572

Office: VERMONT SERVICE CENTER

Date: JAN 21 2005

IN RE: Petitioner: [REDACTED]
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.

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 the Dominican Republic 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 establish that she is a person of good moral character. The director, therefore, denied the petition.

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 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 [REDACTED] a U.S. citizen, on May 30, 1996 in Queens, New York. The petitioner indicated that she lived with her citizen spouse from 1996 until August 2002. On November 25, 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 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

Because the record contains information that the petitioner was convicted of promoting prostitution in the 4th degree (PL 230.20), on September 29, 2003, the director requested her to submit (1) a statement explaining the circumstances surrounding the arrest, (2) a copy of the arrest report, (3) court documents to show the final disposition of the charge, and (4) relevant excerpts of law for the jurisdiction where was convicted showing the maximum possible penalty for each charge. The petitioner submitted a certificate of conviction showing that she pled guilty to the offense of promoting prostitution in the 4th degree, a misdemeanor, in Newburgh, New York. She was fined \$500. (Docket [REDACTED]) The petitioner provided Citizenship and Immigration Services (CIS) with excerpts of New York law showing the maximum possible penalty for a misdemeanor is a term of imprisonment is one year. The petitioner submitted her own statement dated January 7, 2004, indicating that she had been working as a cleaning lady twice a week at the house where she was arrested. She claimed that she had not noticed "any strange happenings." She further stated that she pled guilty because her attorney told her that she could avoid another court appearance by pleading guilty. On appeal, the petitioner submitted a conflicting statement in which she claimed that she had only cleaned the house one time (she claims she intended to clean it for one day only, but the house was so dirty that it took her three days to clean it), and that the police picked her up during that one-time job. These conflicting claims regarding the nature and length of her work history in the brothel have not been resolved. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner submitted an affidavit from a friend, indicating that a woman on the subway had asked her if she wanted a housecleaning job, and if not, to pass on the woman's phone number to someone else in need of a job, so she gave the phone number to the petitioner. On appeal, the petitioner submitted an affidavit from the Reverend Miguel Jimenez of the Cristo Viene Ya! Church in Bronx, New York, stating that the affiant had known the petitioner for five years and that the petitioner was organized, reliable and "participates in servicing her community." The petitioner submitted another affidavit from a friend, [REDACTED] stating that the petitioner is "a responsible and good person to be recommended."

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

Section 101(f) of the Act states, in pertinent part:

For the purposes of this Act. – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs 2(D) . . . of Section 212(a) of the Act

Section 212(a)(2)(D) of the Act provides, in part:

Prostitution and commercialized vice.—Any alien who—

(ii) . . . received, in whole or part, the proceeds of prostitution is inadmissible.

In review, the evidence establishes that the petitioner pled guilty to promoting prostitution (PL 230.20). PL. 230.20 provides that "a person is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution." The petitioner is clearly statutorily ineligible 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.