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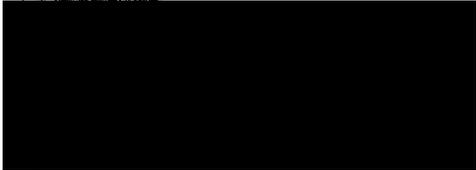
U.S. Department of Justice

Immigration and Naturalization Service

B9

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: 
EAC 01 205 55137

Office: Vermont Service Center

Date: **DEC 16 2002**

IN RE: Petitioner: 
Beneficiary: 

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations 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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she met the requirements of 8 C.F.R. 204.2(c)(1)(i)(A) because the petitioner: (1) failed to submit evidence of the legal termination of her prior marriage and of the prior marriage of the petitioner's spouse (Mr. Campos); and (2) remarried prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, counsel asserts that neither the petitioner nor Porfirio Campos had been previously married, and that according to the marriage license that accompanied the self-petition, they were both single when they married. Counsel further asserts that there is no legal basis to the director's finding that the self-petitioner's remarriage is a ground for the denial of the petition. She states that it appears that the Service has made an erroneous decision based on the old regulations, 8 C.F.R. 204.2(c)(1)(ii), the last sentence of which states, "the self-petitioner's remarriage will be a basis for denial of the self-petition."

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 petition, Form I-360, indicates that the petitioner arrived in the United States in March 1989. Her current immigration status and how she entered the United States are not indicated. The petitioner married [REDACTED] a lawful permanent resident alien, on December 9, 1991 at Los Angeles, California. They were divorced on July 9, 1999. On December 2, 2000, at Tulsa, Oklahoma, the petitioner married [REDACTED]. On April 28, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse [REDACTED] during their marriage.

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. **The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.**

(Emphasis supplied.) The record in this case shows that prior to the filing of the self-petition, the petitioner remarried.

Contrary to counsel's assertion that there is no legal basis to the director's finding that the self-petitioner's remarriage is a ground for the denial of the petition, 8 C.F.R. 204.2(c)(1)(ii)

clearly states that the self-petitioner's remarriage will be a basis for the denial of a pending self-petition. In this case, the petitioner remarried before she filed the self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1507(b) amends section 204(h) of the Act so that remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205 of the Act.

The petitioner, in this case, does not fall under this provision because she had no approved self-petition when she remarried. In fact, she had no pending petition prior to her remarriage. The petitioner, therefore, is ineligible for the benefit sought.

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.