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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[Redacted]

FILE: [Redacted]
EAC 01 228 51218

Office: Vermont Service Center

Date: NOV - 8 2002

IN RE: Petitioner:
Beneficiary:

[Redacted]

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:

[Redacted]

Public Copy

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 the Ivory Coast 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 is the spouse of a citizen or lawful permanent resident of the United States. He noted that the petitioner's spouse was no longer in a lawful permanent resident status on the date of filing the self-petition. The director, therefore, denied the petition.

On appeal, counsel asserts that placing the burden on the petitioner to prove the immigration status of her abusive husband presents an insurmountable burden of proof. He further asserts that the petitioner met all of the eligibility requirements except 8 C.F.R. 204.2(c)(1)(i)(A); therefore, the petitioner is requesting that a more thorough investigation regarding her husband's immigration status be made.

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 record reflects that the petitioner last arrived in the United States on September 16, 2000 with a fraudulent passport under the name [REDACTED]. She was subsequently paroled from Service custody pending the completion of her removal proceedings under section 240 of the Act. The petitioner married [REDACTED] on April 5, 1996 at New York, New York. On July 17, 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 alleged permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) requires that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(iii) requires that the abusive spouse must be a citizen or a lawful permanent resident of the United States when the petition is filed and when it is approved.

A records check conducted on [REDACTED] Service records determined that Mr. [REDACTED] willfully abandoned his lawful permanent resident status on February 4, 1994. The record of proceeding contains a copy of Mr. [REDACTED] request for abandonment of lawful permanent resident status, signed on February 4, 1994. Because the petitioner's spouse was no longer in a lawful permanent resident status on July 17, 2001, the date the self-petition was filed, the director denied the 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 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a resident alien may file a petition if the alien demonstrates that he or she is a bona fide spouse of a lawful permanent resident within the past two years and whose spouse lost status within the past two years due to an incident of domestic violence. *Id.* Section 1503(c), 114 Stat. at 1520-21. Pub. L. 106-386 does not

specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. Johnson v. United States, 529 U.S. 694, 702 (2000); Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

In this case, the petitioner's spouse did not lose his status due to an incident of domestic violence within the past two years of filing of the self-petition. Mr. [REDACTED] voluntarily and willfully abandoned his status on February 4, 1994, more than two years prior to his marriage to the petitioner, and more than seven years prior to the filing of the self-petition on July 17, 2001.

The petitioner is, therefore, statutorily ineligible for the benefit sought pursuant to section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act.

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.