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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE: [Redacted]
EAC 01 201 50336

Office: Vermont Service Center

Date: AUG 22 2003

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)

ON BEHALF OF PETITIONER:



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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 the Dominican Republic 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: (1) 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; and (2) is a person of good moral character. The director noted that the petitioner's spouse lost lawful permanent resident status more than two years prior to the filing of the self-petition, and it would appear that the petitioner may not be eligible under the new law enacted on October 28, 2000. The director, therefore, determined that the petitioner failed to establish that she (3) is the spouse of a citizen or lawful permanent resident of the United States; and (4) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A), based on that relationship.

On appeal, counsel asserts that the petitioner has obtained numerous affidavits from neighbors and friends attesting that the petitioner was both physically and mentally abused by her spouse (Mr. [REDACTED] and that the petitioner's children additionally experienced extreme mental cruelty as a result of Mr. [REDACTED] recurring, aggressive behavior. Counsel submits a computerized clearance check of the petitioner's name-variations from the Commonwealth of Massachusetts, establishing her good moral character. Counsel further asserts that the petitioner was not notified of the termination of Mr. [REDACTED] legal status, she timely filed for adjustment of status in the good-faith belief that Mr. [REDACTED] retained legal permanent resident status at the time of application, and that Mr. [REDACTED] criminal record includes charges for assault and battery and indecent assault and battery on a child on November 9, 2000.

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, shows that the petitioner entered the United States without inspection on March 18, 1994. The petitioner married her lawful permanent resident spouse on December 19, 1994 at Bronx, New York. On June 2, 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 lawful 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. Additionally, 8 C.F.R. § 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

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.

The Service record reflects that the petitioner's spouse, a native and citizen of the Dominican Republic, lost his status as a lawful permanent resident of the United States when he was ordered removed from the United States on June 23, 1998. The petitioner filed the self-petition on June 2, 2001, more than two years later.

The petitioner is statutorily ineligible for the benefit sought, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A) and (B). Therefore, the findings of the director that the petitioner has failed to establish eligibility, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E) and (F), need not be addressed.

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.