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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 01 196 51186

Office: Vermont Service Center

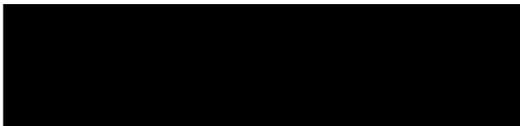
Date: AUG 25 2003

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

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 denied the petition after determining that the petitioner failed to submit evidence, as had been requested, to establish that she is a person of good moral character, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

Upon review of the record of proceeding, the AAO noted that although the petitioner, on appeal, furnished letters from two individuals and a self-affidavit attesting to her good moral character, the petitioner had failed to submit a local police clearance or a state-issued criminal background check for each locality or state in the United States where the self-petitioner had resided for six or more months during the three-year period immediately preceding the filing of the petition. The AAO, therefore, concurred with the director's conclusion and dismissed the appeal on January 10, 2003.

On motion, counsel submits a criminal history search for the petitioner. He states that this report shows that the petitioner has never had any contact with law enforcement.

It is noted, however, that the "Criminal Justice Name Search Results" relating to the petitioner was obtained through the Internet "Online Services." The reliability and/or authenticity of this report is questioned. The petitioner has failed to submit a certified copy of a clearance from local police or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner had resided for six or more months during the three-year period immediately preceding the filing of the petition.

Accordingly, the petitioner has failed to overcome this basis for denial on motion, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

Although not previously noted in the decisions of the director and the AAO, the record of proceeding contains the Verified Petition

for Dissolution of Marriage between the petitioner and her spouse [REDACTED], filed with the court on December 14, 1998. The director, on December 11, 2001, requested the current status of the marriage between the petitioner and Mr. [REDACTED]. There was no evidence in the record that this concern of the director was ever addressed.

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.

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 lawful permanent resident is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the permanent resident spouse. *Id.* section 1503(c), 114 Stat. at 1520-21.

Even if there was a connection between the legal termination of the marriage and battering or extreme cruelty, the petitioner may be ineligible for the benefit sought if she was divorced from her spouse for more than two years prior to the filing of her petition on May 18, 2001.

Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO dated January 10, 2003, is affirmed.