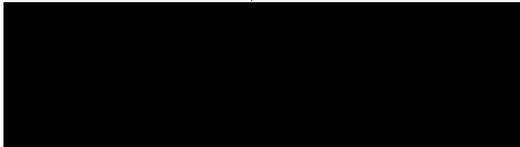


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 04 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: 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: Self-represented

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.

*Cindy M. Somers*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 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 had failed to submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, the petitioner requests that her case be considered because she was abused by her husband. She submits additional evidence.

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<sup>1</sup>; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, shows that the petitioner arrived in the United States on February 5, 1988. However, her current immigration status or how she entered the United States

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<sup>1</sup> 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(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

was not shown. The petitioner married her permanent resident spouse on February 3, 1992, at Hesperia, California. On September 24, 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 during their marriage.

Because the evidence contained in the record was insufficient to establish the petitioner's eligibility for the benefit sought, she was requested on January 8, 2002, to submit: (1) proof of the legal termination of her prior marriage and proof of the legal termination of her spouse's prior marriage; (2) evidence that she had resided with her spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D); (3) evidence to establish that she or her children had been the subject of battery or extreme mental cruelty committed by her spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); (4) evidence of her good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F); and (5) evidence that the petitioner married her spouse in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition.

On appeal, the petitioner submits the following documents:

1. A bank statement for the period July 31, 1996 to September 2, 1996, under the name of the petitioner's spouse [REDACTED] only, addressed to Mr. [REDACTED]
2. A mortgage statement dated October 16, 1997, under the name of [REDACTED] only, addressed to [REDACTED]
3. A [REDACTED] executed on February 6, 1997, by [REDACTED] a single man," granting [REDACTED] single man and [REDACTED], a single woman as joint tenants," for a property in the City of [REDACTED] of San Bernardino, California (address: [REDACTED])
4. A telephone bill dated February 9, 1998, under the name of the petitioner only, addressed to [REDACTED]
5. An affidavit from [REDACTED] indicating that the petitioner is his cousin, that he was a witness to her wedding with [REDACTED] and that they separated due to domestic violence.
6. An affidavit from [REDACTED] indicating that the petitioner is his next door neighbor, that the petitioner visited his wife often, and that she is the wife of [REDACTED]
7. An affidavit from [REDACTED] indicating that she was the next door neighbor of the petitioner and her husband, and that they separated a year ago because of domestic problems.
8. An affidavit from [REDACTED] indicating that she was a witness when the petitioner married [REDACTED] and that after the marriage, the petitioner's husband's behavior changed.

The Form I-360 reflects that the petitioner claimed to have married her spouse in 1992 and they were separated in 1997. None of the documents furnished show a joint address or evidence that the petitioner resided with her spouse during the marriage. In fact, the telephone bill addressed to the petitioner at [REDACTED] and the [REDACTED] number 3 above) were dated during the time the petitioner claimed to have separated from her spouse. Further, the affidavits furnished are not sufficient to establish that the petitioner and

her spouse resided together. Furthermore, the affidavits and other evidence furnished are insufficient: to demonstrate that the petitioner had shared a common residence with her spouse; to provide any specific details of the petitioner's relationship with her spouse; and, to establish that she entered into the marriage in good faith.

Accordingly, the petitioner has failed to establish that she and her permanent resident spouse had resided together, and that she entered into the marriage in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D) and 8 C.F.R. § 204.2(c)(1)(i)(H).

As evidence that the petitioner had been battered by, or had been the subject of extreme cruelty perpetrated by her permanent resident spouse, the petitioner furnished the affidavits listed in numbers 5, 7, and 8 above. None of the affiants described the incidents of the abuse, the extent of the abuse, or that they have personal knowledge of the abuse. Nor did the petitioner furnish documents, other than the three affidavits, to show evidence of an abusive relationship. Affidavits, without corroborating evidence of the abuse, do not establish that the petitioner had been the subject of extreme cruelty.

Therefore, the petitioner also has failed to establish that she was battered by, or was the subject of "extreme cruelty" (as contemplated by Congress), and to overcome the findings of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

The petitioner was requested to submit evidence of proof of the legal termination of her prior marriage, and proof of the legal termination of her spouse's prior marriage. She was also requested to submit evidence of her good moral character. The petitioner failed to comply with the director's request.

On appeal, the petitioner neither addressed nor submitted any of the evidence requested. Accordingly, the petitioner also has failed to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B) and 8 C.F.R. § 204.2(c)(1)(i)(F).

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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.