



U.S. Citizenship
and Immigration
Services

B-9

[REDACTED]

FILE: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: AUG 16 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

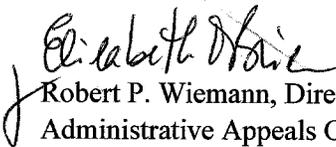
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is again before the AAO on a motion to reopen and reconsider.

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, in part, because the petitioner remarried prior to the filing of the self-petition. The AAO affirmed the director's decision, citing the regulation at 8 C.F.R. § 204.2(c)(1)(ii) for the proposition that the self-petitioner's remarriage is a basis for the denial of a pending self-petition.

On motion, counsel for the petitioner asserts that the director and the AAO relied upon regulations that have been superceded by amendments to the Act.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

- (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

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 . . . 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; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

According to the evidence on the record, the petitioner wed United States permanent resident Porfirio Campos on December 9, 1991 in Los Angeles, California. The petitioner and her resident spouse divorced on July 9, 1999 in Oklahoma. The petitioner married Frederico Marquez on December 2, 2000. She subsequently filed a Form I-360 self-petition on April 28, 2001 claiming eligibility as a special immigrant alien who has been battered by, or

has been the subject of extreme cruelty perpetrated by, her resident spouse, Porfirio Campos, during their marriage.

The director determined, and the AAO concurs, that the petitioner's remarriage prior to the filing of the Form I-360 petition renders her ineligible for relief under the Violence Against Women Act (VAWA). While Congress amended the VAWA provisions of the Act by passing the Battered Immigrant Women Protection Act of 2000, it did not extend protection under the Act to those who remarry before filing or adjudication of their petitions. Section 204 of the Act, as amended, does not provide that remarriage before the self-petition is filed or approved is permitted. It is noted that Section 204 of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155." The phrase "whose petition was approved" indicates that remarriage prior to the approval of Form I-360 is not permitted. It stands to reason that an abused spouse would no longer need the safe harbor of the law and legal protection from the abusive spouse after remarriage. Congress specifically considered that remarriage of an abused spouse would not terminate eligibility once a petition had been approved; by implication, remarriage before filing the Form I-360 petition does terminate eligibility.

Counsel argues that the AAO applied a regulation that is no longer in use, as it has been superseded by the amendments to the statute. As we have determined that the statutory amendments do not allow a remarried alien to file for benefits under this provision of law, the cited regulation remains in force. Under section 204(h) of the Act, 8 U.S.C. § 1154(h), and 8 C.F.R. § 204.2(c)(1)(ii) the self-petitioner's remarriage is grounds for denying the pending self-petition.

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 prior decisions of the director and AAO shall be affirmed.

ORDER: The prior decisions of the director and the AAO are affirmed and the petition is denied.