



U.S. Citizenship  
and Immigration  
Services

BA



FILE: [Redacted]  
EAC 03 120 53854

Office: VERMONT SERVICE CENTER

Date: **AUG 18 2004**

IN RE: Petitioner:  
Beneficiary:



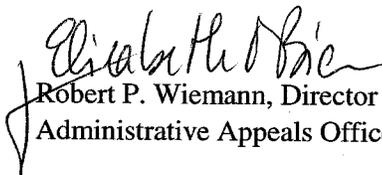
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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

**PUBLIC COPY**  
**Administrative data deleted to**  
**ADMINISTRATIVE APPEALS OFFICE**  
**20 MASS, RM A3042, 425 I ST, NW**  
**Washington, DC 20529** privacy

**DISCUSSION:** The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a citizen and native of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

In a decision dated April 1, 2004, the acting director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she remarried before filing the instant petition.

On appeal, counsel for the petitioner asserts that “nothing in the amended statute requires the denial of a petition based on the self-petitioner having remarried.” Counsel further asserts that the acting director made her decision relying on outdated regulations.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, 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 United States citizen 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 record reflects that the petitioner wed United States citizen [REDACTED] on March 9, 1998 and divorced on March 12, 2001. The record further reflects that the petitioner was placed in removal proceedings on January 16, 2003. She wed David Segura on January 27, 2003. On March 6, 2003, the petitioner filed a self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse, Martin Guevara, during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

In a request for additional evidence dated January 30, 2004, the acting director requested the petitioner to submit additional evidence. The petitioner responded to the request.

The acting director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner argues that the 2000 amendments to the Violence Against Women Act (VAWA) amended the act to allow for an abused or battered self-petitioner to file for benefits under the act after remarriage.

We find that the petitioner's remarriage to one other than her abusive spouse prior to the approval of the immigrant visa is a bar to granting the benefit. Section 204 of the Act, as amended, does not permit remarriage before the self-petition is approved. Section 204(h) of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title." By implication, remarriage prior to approval of such a petition creates a bar to eligibility under this provision of law. Common sense dictates that relief under VAWA is limited to those who are vulnerable to spousal or parental abuse. Once remarried, an alien is less vulnerable to abuse by his or her prior spouse.

Counsel further argues that the 2000 amendments to the act rendered 8 C.F.R. § 204.2(c)(1)(ii) inoperative. The statute clearly revoked sections of this regulation contrary to the 2000 amendments. For example, the self-petitioning spouse no longer must be legally married to the abuser when the petition is properly filed with CIS, as provided under the regulation. However, the statute does not conflict with and did not revoke the last sentence of the cited regulation, which is still in force: "The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition under the regulation."

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.