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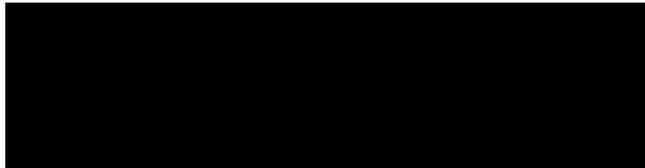
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: DEC 03 2004  
EAC 03 056 51579

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:



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.

*Mari Johnson*

*RP* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, because according to the evidence on the record, she was not married to her putative spouse, and had failed to establish that she entered into the marriage in good faith.

On appeal, counsel for the petitioner submits additional documents.

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

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.

Section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), provides that:

(I) An alien who is described in subclause (II) may file a petition . . . for classification of the alien . . . if the alien demonstrates . . . 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 . . . has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(BB) who believe that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States.

The petitioner states that she met her putative spouse, [REDACTED] in November 1995. She said that she and [REDACTED] have a common law marriage. Counsel for the petitioner states that the petitioner and her putative spouse began living together in 1997. The petitioner asserts that she resided with her putative spouse for five years. The petitioner indicated on the Form I-360 that her putative spouse had been married twice. In a request for additional evidence, the director requested the petitioner to submit additional evidence to establish that she and [REDACTED] were in a common law marriage. The director specifically requested that the petitioner submit a certificate from the civil authorities in Texas as evidence of their common law marriage. The director also requested proof of the legal termination of [REDACTED] previous marriage.

In response to the request for additional evidence, the petitioner indicated that when she revealed to her putative spouse that she was pregnant with his child, he decided to move in with her, but that he would stay away for two to three months then return. The petitioner further indicated that when she met her putative spouse, she did not know he was married and when she suggested that they marry, he would say "later."

Section 204(a)(1)(B)(ii)(II) of the Act requires that the self-petitioner establish that she is married to a permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. There is no evidence on the record to establish that the petitioner and her putative spouse had a wedding ceremony. The petitioner did not assert that she and her putative spouse had a wedding ceremony. The petitioner submitted no evidence that her putative spouse terminated his first marriage. The petitioner submitted no evidence that she and her putative spouse are in a common-law marriage recognized by the State of Texas. Accordingly, the petitioner has not established that she and her putative spouse were married for purposes of Section 204(a)(1)(B)(ii) of the Act. The petitioner does not fall within one of the statutory exceptions to this requirement.

Because the record contained insufficient evidence that the petitioner entered into the marriage in good faith, she was requested on September 4, 2003, to submit additional evidence to show that she married her spouse in good faith. The director listed the specific types of evidence the petitioner could submit to establish the bona fides of her marriage.

In review, the evidence is insufficient to establish that the petitioner wed her spouse in good faith. She failed to submit insurance policies in which she or her putative spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents showing that she shared accounts with her putative spouse. She failed to submit evidence of her courtship and wedding ceremony. She submitted two photographs. One photograph is a group shot. The other photograph was taken of the petitioner, the putative spouse and a second woman. The petitioner failed to submit evidence of joint ownership of property. She failed to establish that children were born of the relationship. The affidavits she submitted provide scant information about the petitioner's relationship with her putative spouse. The evidence is insufficient to establish the bona fides of the marriage.

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.