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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



B9

FILE:

[Redacted]
EAC 03 083 51775

Office: VERMONT SERVICE CENTER

Date: DEC 14 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

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)(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.

The director denied the petition, in part, finding that the petitioner failed to establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act. 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, the petitioner married her citizen spouse while she was still married to her first husband, rendering the latter marriage void.

On appeal, counsel for the petitioner asserts that the petitioner divorced her first husband prior to her marriage to the citizen.

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 October 16, 1997 in Chicago, Illinois. Mr. [REDACTED] filed a Form I-130 on the petitioner's behalf. The petitioner filed a Form I-485, application to register permanent residence or adjust status, which was denied on September 2, 2000 due to abandonment. The petitioner's marriage to her citizen spouse was terminated on November 14, 2002. On January 14, 2003, the petitioner filed a Form I-360 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 during their marriage.

Because the petitioner furnished insufficient evidence to establish that she had been legally married to the allegedly abusive citizen spouse within two years of filing the Form I-360 petition, and that she is a person of good moral character, she was requested on October 28, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she is a person of good moral character. The director further indicated that she needed to submit proof of the legal termination of her prior marriage.¹

In response to the request for additional evidence, the petitioner submitted evidence of good moral character and a death certificate of her prior husband.

The 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 director noted that the petitioner's prior husband died on May 22, 1998, approximately seven months after she wed her citizen spouse.

On appeal, counsel for the petitioner states that the petitioner was divorced from her first husband in 1995 or 1996 but since she did not have a copy of the divorce decree, she submitted a death certificate. On appeal, the petitioner submits a divorce decree indicating that the petitioner's marriage to her first husband was terminated on August 19, 1996.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

¹ It is noted that the petitioner failed to mention her prior marriage on her Form I-485 and Form G-325A that she filed with the Immigration and Naturalization Service [now Citizenship and Immigration Services].

The evidence is insufficient to establish that the petitioner was the spouse of a citizen or lawful permanent resident of the United States within two years of filing the Form I-360. The evidence is insufficient to establish that the petitioner is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

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.