U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 14 2004
EAC 03 141 52694

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center Director on March 24, 2004. Counsel for the petitioner filed a timely appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Philippines 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 lawful permanent resident of the United States.

The director denied the petition, finding 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's marriage to her citizen spouse had been terminated more than two years prior to the filing of the petition.

On appeal, counsel for the petitioner asserts that the petitioner is still eligible for the battered spouse visa because she was unaware of the divorce until February 2003, one month prior to the filing of the instant petition.

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)(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.

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's marriage to her citizen spouse had been terminated more than two years prior to the filing of the petition. The director determined and the AAO concurs that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing a Form I-360 petition.

According to the evidence on the record, the petitioner married her United States citizen spouse on May 8, 1995 and divorced on April 30, 1996. The petitioner filed the Form I-360 self-petition on April 3, 2003, more than five years after the marriage was terminated.

On appeal, counsel for the petitioner argues that the petitioner is still eligible for the battered spouse visa because she was unaware of the divorce until February 2003. Counsel's assertion is not persuasive. First, it is immaterial whether the petitioner knew her divorce was final. Second, the evidence on the record indicates that the petitioner was served with a divorce petition, so she was on notice that a divorce was imminent.

<u>The petitioner failed to establish that she was the spouse of a citizen either at the time of or within two years prior to the filing of the petition.</u>

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that she is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. The petitioner does not fall within one of the statutory exceptions to this requirement. Her marriage to the alleged abusive spouse terminated more than two years prior to the filing of the instant petition.

Congress's goal in enacting the Violence Against Women Act of 1994 (VAWA) was to eliminate barriers to women leaving abusive relationships. H.R. REP. No. 103-395, at 25 (stating that the goal of the bill is to "permit[ ] battered immigrant women to leave their batterers without fearing deportation"). While the spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, Congress found the Act failed to protect all that it intended to protect, including divorced battered immigrants and children who were abused before the age of 21. In a hearing before the Subcommittee on Immigration and Claims, Congresswoman Jackson-Lee discussed those people for whom VAWA was created to protect. The Congresswoman stated:

> The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser . . . I can say that unfortunately, our job, as lawmakers, is not yet done. Our intent in 1994 was to provide battered immigrants with meaningful access to lawful immigration status, thus allowing them to safely leave their abusers. Nevertheless, we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status . . . [D]ivorced battered immigrants do not have access to VAWA immigration relief. There are many "savvy"

> abusers who know that if they divorce their abused spouse they will cut off their victim's access to VAWA relief. H.R 3083 allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce.[1]

Clearly, the petitioner is not the type of battered immigrant woman with whom Congress was concerned with protecting when enacting VAWA or BIWPA as her divorce had been final for more than two years prior to the filing of the Form I-360 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 appeal will be dismissed.

ORDER: The appeal is dismissed.

[1] *Battered Immigrant Women Protection Act of 2000*, (BIWPA): *Hearing on H.R. 3083 Before the House Subcommittee on Immigration and Claims*, 106th Cong. (2000)(statement of Congresswoman Jackson-Lee).