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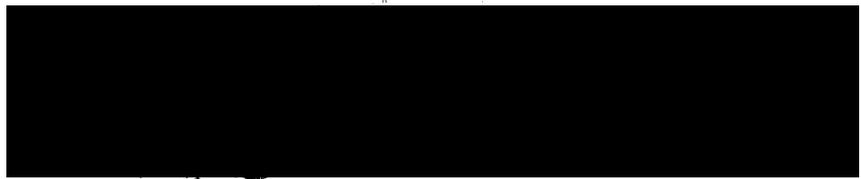
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services

B9



FILE: [Redacted]  
EAC 02 172 52871

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)(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.

*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 on appeal. The appeal will be dismissed.

The petitioner is a 30-year old native and citizen of Brazil 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.

According to the evidence on the record, the petitioner wed lawful permanent resident [REDACTED] January 9, 2002 in Miami Beach, Florida. The evidence further indicates that the petitioner's spouse was previously married.

The petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse on April 22, 2002.

The director denied the petition, finding that the petitioner failed to establish that she was the spouse of a citizen or lawful permanent resident of the United States at the time of filing the Form I-360 petition. The director further determined that the petitioner failed to establish that she is eligible for immigrant classification based on her relationship to her spouse. The director found that the petitioner failed to establish that she resided with her spouse during the marriage and that she entered into the marriage to the citizen in good faith.

On appeal, counsel submits a brief and additional evidence.

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 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;

\* \* \*

(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 director denied the petition, in part, because the petitioner had failed to establish that she was legally married to her resident spouse at the time of the filing of the Form I-360 petition. On the Form I-360, the petitioner indicated that her husband had been previously married. On October 4, 2002, the director requested additional evidence, including evidence of the legal termination of the prior marriage of [REDACTED]. Nothing was submitted in response to issue. On appeal, counsel for the petitioner failed to submit any evidence or argument relating to this issue.

The director denied the petition, in part, finding that the petitioner had failed to establish that she resided with her resident spouse and entered into the marriage in good faith.

In a request for additional evidence, the director instructed the petitioner to submit evidence that she had resided with her spouse and entered into the marriage in good faith. The petitioner responded to the request.

The evidence on the record relating to the issues of joint residence and a bona fide marriage consists of the following:

- Undated uncaptioned photographs of the petitioner and her spouse.
- Undated uncaptioned photographs of the petitioner, her spouse, and unidentified persons.
- The petitioner's marriage certificate.
- A November 26, 2003 letter from First Union Bank indicating that the petitioner and her spouse had an account that was closed on February 13, 2001.
- The petitioner's driver's license indicating she resided at [REDACTED] June 19, 2001.
- A psychological evaluation.
- The petitioner's statement.
- A temporary restraining order issued March 5, 2001.

In review, the evidence is insufficient to establish the bona fides of the marriage, that the petitioner resided with her spouse, or that the petitioner entered into the marriage in good faith.

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. She failed to submit evidence of joint ownership of property. No children were born of the marriage. The affidavits provided contain scant information about the petitioner and her husband's courtship and married life. The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together.

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.