



U.S. Citizenship  
and Immigration  
Services

B-9

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 14 2004

EAC 02 112 52170

IN RE:

Petitioner:

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:

[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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 native and citizen of Guatemala 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 denied the petition, finding that the petitioner failed to establish that he is a person of good moral character.

On appeal, counsel for the petitioner submits evidence to establish that the petitioner is a person of good moral character.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, 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 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 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.

According to the evidence on the record, the petitioner wed [REDACTED] a lawful permanent resident, on April 14, 1997, in Rockville, Maryland. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner that was approved. On February 12, 2002, 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, his U.S. resident spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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 qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that he has resided with his resident spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he has resided with his spouse, he has been battered by or the subject of extreme cruelty by his wife, he is a person of good moral character and entered into the marriage in good faith, he was requested on July 2, 2002, to submit additional evidence. The acting director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that he had resided with his spouse, that he married his spouse in good faith, and that he is a person of good moral character. The petitioner responded to the request for additional evidence.

On June 18, 2003, the acting director notified the petitioner of his intent to deny the petition. In the Notice of Intent to Deny, the acting director informed the petitioner that although he had submitted sufficient evidence to establish that he had resided with his wife, the "remainder of the evidence submitted needs clarification."

Counsel for the petitioner responded to the Notice of Intent to Deny by submitting additional evidence including an affidavit of the petitioner.

In his decision denying the petition, the acting director reviewed and discussed the evidence furnished by the petitioner, and the petitioner's counsel. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits a divorce decree awarding custody of the petitioner's child to the petitioner and five affidavits attesting to the petitioner's good moral character.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that he is a person of good moral character. In a request for additional evidence, the acting director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year

period before filing the Form I-360 petition. The petitioner failed to provide any clearances. The petitioner failed to overcome the acting director's objections to approving the 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.