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



U.S. Citizenship  
and Immigration  
Services



FILE:

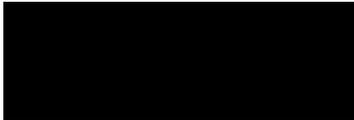
[Redacted]  
EAC 03 106 52892

Office: VERMONT SERVICE CENTER

Date: JUL 22 2004

IN RE:

Petitioner:  
Beneficiary:



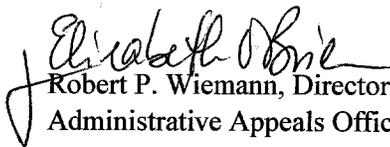
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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, 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 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 acting director denied the petition, finding that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States.

On appeal, counsel for the petitioner asserts that the petitioner had a common-law relationship with Francisco Valerio and that it is incumbent upon Citizenship and Immigration Services (CIS) to ascertain the immigration status of [REDACTED]

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;

(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.

On the Form I-360, the petitioner indicated that she was unmarried. The Form I-360 requires that the petitioner indicate whether his or her spouse is now or was at the time of death, a U.S. citizen or lawful permanent resident or "other." The petitioner checked "other" but failed to explain what she meant by "other."

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character and the immigration status of her putative spouse, she was requested on December 12, 2003, to submit additional evidence. The acting director indicated that her office had been unable to determine the immigration status of the petitioner's spouse.

The acting 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 discussion will not be repeated here.

On appeal, counsel for the petitioner asserts that it is incumbent upon CIS to establish the immigration status of the petitioner's spouse.

Counsel's assertions are not persuasive. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner failed to establish that she is or has been married to a United States citizen or resident.

Counsel further asserts that the acting director erred by requiring the petitioner to be legally married to her spouse in order to qualify for this classification. Counsel asserts that the petitioner is an abused spouse by virtue of being the parent of the alleged abusive spouse's children.

The self-petitioning spouse must be legally married to the U.S. citizen or resident abuser when the petition is filed unless the self-petitioner can establish one of the following: (1) the marriage to a U.S. citizen or permanent resident is not legitimate because of the bigamy of the abuser but the self-petitioner believed that the marriage was legitimate, a marriage ceremony was actually performed, and he or she entered the relationship in good faith; or (2) the self-petitioner was the spouse of a citizen or permanent resident within the past two years, but (a) the marriage was terminated in the past two years and the termination was related to domestic violence, (b) the abuser lost his or her citizenship or permanent resident status in the past two years or renounced his or her citizenship within the past two years and the loss of status or renunciation was related to domestic violence, or (c) the U.S. citizen abuser died in the past two years. Section 204(a)(1)(A)(II)(aa), 8 U.S.C. § 1154(a)(1)(A)(II)(aa). The petitioner has not shown her eligibility for benefits as the spouse of a U.S. citizen or permanent resident.

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.