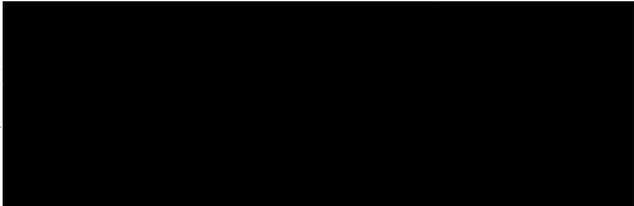




U.S. Citizenship
and Immigration
Services

B-9



FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 27 2004

IN RE:

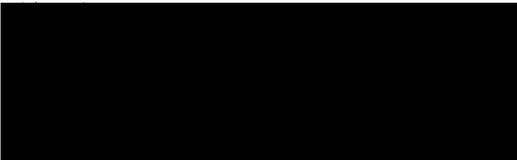
Petitioner:

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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the 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 the Dominican Republic 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 citizen of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive U.S. citizen spouse prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, counsel submits a brief.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) 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 in the United States 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;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child¹; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the petitioner arrived in the United States on February 28, 1987. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on May 13, 1995, at Boston, Massachusetts. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the judgment

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

of divorce became effective on March 29, 1999. On February 19, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved the enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A) of the Act to read, in pertinent part, as follows:

(iii)(I) Any alien who is described in subclause (II) may file a petition with the Attorney General² under this clause for classification of the Alien (and any child of the alien) 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.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and...

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse...

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse for more than two years prior to the filing of the self-petition. He maintained 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 the Form I-360 self-petition is filed.

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or

² Now, the Secretary of the Department of Homeland Security (the Secretary).

extreme cruelty by her spouse, the record reflects that the petitioner and her citizen spouse divorced on March 29, 1999. The petitioner filed the instant petition on February 19, 2002, more than two years after the divorce was final.

Counsel, on appeal, states that a Freedom of Information Act (FOIA) request revealed that the petitioner, in fact, filed an initial Form I-360 petition on March 2, 1998, 13 months prior to the formal termination of her marriage to the U.S. citizen. Counsel asserts that the petitioner did not receive the Service's [now Citizenship and Immigration Services (CIS)] request for additional evidence with respect to the initial Form I-360 petition; nor did she receive the letter denying her initial Form I-360.

A review of the record reflects that the petitioner did file an initial Form I-360 petition on March 2, 1998. On March 27, 1998, the petitioner was requested to submit additional evidence to establish eligibility for the benefit sought. She was granted 60 days in which to respond to the director's request for evidence. Because the record did not contain a response from the petitioner, the director concluded that the petitioner had abandoned her petition and denied the petition on July 29, 1998.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record, in this case, shows that a motion to reopen the director's decision was not filed by the petitioner. While counsel asserts that the petitioner did not receive the letters from the director, it is noted that the request for additional evidence and the director's decision to deny the petition were mailed to the petitioner's address provided to CIS. There is no evidence in the record that the director's notice was returned to CIS as undeliverable. The petitioner has not overcome the findings of the director, and the petition must be denied.

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. The appeal will be dismissed.

ORDER: The appeal is dismissed.