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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted]  
EAC 02 285 53123

Office: VERMONT SERVICE CENTER

Date: OCT 26 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent unauthorized disclosure  
of information

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**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center Director in a decision dated September 22, 2003. The petitioner's counsel 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 Peru 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 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 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 had divorced her abusive citizen spouse and remarried while her Form I-360 petition was pending.

According to the evidence on the record, the petitioner married [REDACTED] a United States citizen on March 13, 2001 and divorced on November 22, 2002. The petitioner filed the Form I-360 self-petition on September 12, 2002. The evidence further indicates that the petitioner wed Wallace Woodward on February 25, 2003 while her Form I-360 petition was still pending adjudication.

On appeal, counsel for the petitioner asserts that the director incorrectly interpreted section 204(h) of the Act in light of the legislative history of the *Battered Immigrant Women Protection Act of 2000*, Pub. L. No. 106-386, § 1507(a)(3), 114 Stat. 1518 (Oct. 28, 2000). Counsel submitted excerpts from the House and Senate Congressional Record on H.R. 8885 and S. 10196. Both excerpts state that section 1507 “[c]larifies that remarriage has no effect on pending VAWA immigration petition.” Counsel failed to note that these excerpts are from bills that did not become law.

Counsel also included an excerpt from a Senate Congressional Record on S.10192 that states, “section 1507 helps battered immigrants more successfully protect themselves from ongoing domestic violence by allowing battered immigrants with approved self-petitions to remarry. Such remarriage cannot serve as the basis for revocation of an approved self-petition or rescission of adjustment of status.” The version enacted into law reads: “Section 204(h) of the [Act] is amended by adding . . . the following: ‘Remarriage of an alien whose petition was approved . . . shall not be the basis for revocation of a petition approval.’” The language adopted and enacted into law is significantly different from the language excerpted from H.R. 8885 and S. 10196.

We are not persuaded by counsel’s argument. Section 204 of the Act, as amended, does not provide that remarriage before the self-petition is filed or approved is permitted. There is no provision for the approval of such a self-petition. Section 204(h) of the Act provides in part that the “[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title.” Congress specifically considered that remarriage of an abused spouse would not terminate eligibility once a petition had been approved; by implication, remarriage before filing the Form I-360 petition does terminate eligibility.

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.<sup>1</sup>

Clearly, the petitioner is not the type of battered immigrant woman with whom Congress was concerned with protecting when enacting VAWA or BIWPA as, after the petitioner's divorce from her abusive spouse, she remarried another United States citizen.

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.

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