

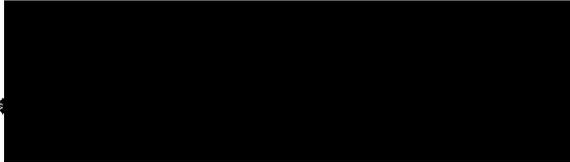
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED]
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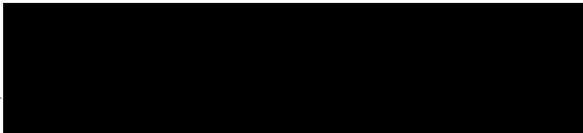
OFFICE: VERMONT SERVICE CENTER

DATE: APR 14 2005

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:



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.

Mari Jensen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition, and 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 the Dominican Republic 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 she has resided with the lawful permanent resident spouse.

On appeal, the petitioner submits additional evidence.

The regulation at 8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, 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 child; and
 - (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married her lawful permanent resident spouse on November 24, 1995 in the Dominican Republic. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on August 4, 1997. On March 20, 2003, the petitioner filed a self-petition claiming eligibility as a special

immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she has resided with her spouse, is a person of good moral character, entered into the marriage in good faith and has been abused by, or the subject of extreme cruelty perpetrated by her resident spouse, the director asked her to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

The 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 submits additional evidence.

In review, the evidence is insufficient to establish that the petitioner resided with her lawful permanent resident spouse during their marriage. The evidence consists of the following:

- An affidavit of the petitioner's mother dated March 31, 2004, stating that the petitioner and her three children lived with her.
- The petitioner's affidavit dated April 16, 2004, stating that she separated from her husband on March 9, 2003 and that she lives with her mother and her three children.
- The petitioner's sister's affidavit stating that on or about March 9, 2003, the petitioner was living at her mother's house located at [REDACTED]
- A notice of a child support hearing scheduled for February 19, 2004, indicating that the petitioner and her husband lived at separate addresses.
- The petitioner's complaint dated November 10, 2002, indicating the petitioner and her spouse resided at two different addresses and apart from one another.
- Affidavits of two of the petitioner's neighbors stating that the petitioner and the petitioner's husband lived with the petitioner's mother until the husband committed an act of domestic violence in 2003.
- The petitioner's affidavit dated July 20, 2004, stating that she lived with her husband in the Dominican Republic between 1990 and 1996. She further indicated that after he moved to Puerto Rico in 1996, he visited the petitioner every two or three months in the Dominican Republic. She said that she went to Puerto Rico in August 2002 and since that date lived with her spouse in her mother's house until March 9, 2003.

The evidence submitted is inconsistent. The petitioner's complaint dated November 10, 2002 states that she and her spouse resided apart. The petitioner stated that she was living with her husband at her mother's home

between 1996 and 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that the petitioner failed to submit a joint lease, mortgage or rental agreement showing she and her husband lived together. She failed to submit insurance policies listing a common address for her and her spouse. She failed to submit invoices listing a common address for the petitioner and her spouse. She did not submit bank statements, tax records and financial documents listing a common address for herself and her spouse. The evidence is insufficient to establish that the petitioner resided with her lawful permanent resident spouse during their marriage.

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.