

identifying data deleted to
prevent unauthorized
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

29



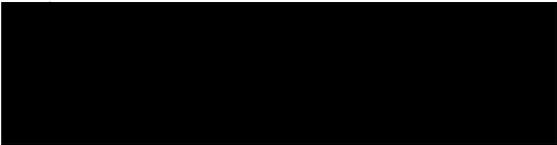
APR 21 2005

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
EAC 03 250 56639

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition in a decision dated August 9, 2004. Counsel for the petitioner 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 Mexico 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 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 and that she is eligible for immigration classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

On appeal, counsel for the petitioner asserts that the director did not provide the petitioner sufficient information by which to defend her petition. The petitioner requested additional information relating to the basis of the denial.

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

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.

Section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), provides that:

- (I) An alien who is described in subclause (II) may file a petition . . . for classification of the alien . . . if the alien demonstrates . . . 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 . . . 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 subclause is an alien—
 - (aa)(AA) who is the spouse of a lawful permanent resident of the United States; or
 - (BB) who believe that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States.

The record reflects that the petitioner married [REDACTED] a native and citizen of Guatemala, on May 8, 2000 in Edinburg, Texas. On May 6, 2003, the petitioner's marriage to [REDACTED] as legally terminated. On September 9, 2003, the petitioner filed a Form I-360 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. The petitioner indicated on the Form I-360 that her husband was a U.S. citizen and provided an incorrect A-file number for her husband.¹ In her decision, the acting director advised the petitioner that the A-number was not valid, and that her spouse was neither a U.S. citizen nor a lawful permanent resident. On appeal, the petitioner submits no additional evidence to establish that her former spouse was either a U.S. citizen or a lawful permanent resident.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that she is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. The petitioner filed her petition within two years of the termination of her marriage and established that termination was related to domestic violence. Nonetheless, the petitioner failed to establish that she was married to a lawful permanent resident or citizen of the United States.

¹ The petitioner also submitted a copy of an unsigned Form I-130 petition of her husband. The Form I-130 indicates that the petitioner's spouse is a naturalized U.S. 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.