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U.S. Citizenship  
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Services

B9

[Redacted]

FILE: [Redacted]  
EAC 03 096 50989

Office: VERMONT SERVICE CENTER

Date: AUG 13 2005

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

*Maig Johnson*

*SR* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center denied the preference visa petition on March 17, 2004. The petitioner timely appealed the director's denial to the Administrative Appeals Office (AAO). The AAO rejected the appeal. The AAO subsequently reopened the matter for the purposes of entering a new decision. The AAO gave the petitioner 30 days to submit a brief pursuant to 8 C.F.R. § 103.4(c) and the petitioner responded by faxing a statement, indicating she hoped that the AAO would reopen the case and approve her petition. The matter is currently before the AAO on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of El Salvador 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.

Finding the record insufficient to establish eligibility, the director issued a request for additional evidence from the petitioner on November 14, 2003. The request for additional evidence was sent to the petitioner at the address listed on the Form I-360 application. The petitioner failed to respond to the request for additional evidence. The director received nothing more from the petitioner; therefore, he denied the petition.

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 her lawful permanent resident spouse on June 1, 1992 at Los Angeles, California. On February 3, 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.

Finding the evidence insufficient to establish that the petitioner is a person of good moral character, and that she had been battered by, or had been the subject of extreme cruelty perpetrated by, the lawful permanent resident, the director issued a request for additional evidence from the petitioner on November 14, 2003. The request for additional evidence was sent to the petitioner at the address listed on the Form I-360 application. The petitioner failed to respond to the request for additional evidence. The director received nothing more from the petitioner; therefore, she denied the petition, finding that she could not make a determination on her eligibility without the requested evidence. On appeal, the petitioner responded to the request for additional evidence.

On appeal, the petitioner resubmitted a copy of a letter dated October 5, 1999, from a Los Angeles City Attorney Office Domestic Violence Victim Advocate informing the petitioner that criminal charges had been filed against [REDACTED] her husband. The petitioner also submitted her own statement indicating that she had previously responded to the request for additional evidence by submitting originals hence she could not resubmit the evidence.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

In review, the evidence is sufficient to establish that the petitioner was subjected to battery or extreme cruelty by her lawful permanent resident spouse. The evidence consists of the following:

- A protective order in criminal proceeding dated November 1, 1999 restraining the petitioner's spouse.
- A letter dated October 5, 1999, from a Los Angeles City Attorney Office Domestic Violence Victim Advocate informing the petitioner that criminal charges had been filed against her husband.
- The statement of Stephanie Hernandez, the petitioner's daughter, dated September 11, 2002, stating that she had observed her father, the petitioner's spouse, hitting her mother, the petitioner, and calling her names.
- An affidavit of the petitioner's friend, Ivonne Judith Treminio, stating that the petitioner's husband physically and verbally abused the petitioner.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances in response to the RFE, on appeal, or in response to the February 18, 2005 motion. The petitioner failed to overcome the director's objections to approving the petition.

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.

**ORDER:** The appeal is dismissed.