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**U.S. Citizenship
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FILE: [REDACTED]
EAC 05 024 53546

Office: VERMONT SERVICE CENTER

Date: DEC 02 2005

IN RE: Petitioner: [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)

IN 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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 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.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the lawful permanent resident of the United States 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.

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;

* * *

(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.

According to the evidence in the record, the petitioner wed her spouse, [REDACTED] on July 21, 1990 in Otumba, Mexico. The petitioner's spouse filed a Form I-130 petition in the petitioner's behalf on

April 24, 2001, which was approved on March 14, 2005. The record further indicates that the petitioner and her spouse were divorced on September 19, 2002. The petitioner filed the instant Form I-360 on November 1, 2004, 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 director denied the petition on May 10, 2005 because more than two years had lapsed since the petitioner was the spouse of a lawful permanent resident of the United States; hence, she was ineligible for this classification.

The petitioner submits a timely appeal with no additional evidence. In her statement on appeal, although the petitioner addresses the abuse she suffered and the fact that she had two children with her spouse, the petitioner fails to address the director's finding regarding the fact that the petitioner's qualifying relationship ended more than two years prior to the filing of the instant petition. The petitioner states:

Abuse is hard to prove. I filed an I-360 because your own offices gave the opportunity. I do not know what else to submit to your office. You state that I should prove 1) Relationship – we had two children (certificate of births were attached), he was a permanent resident copy of the I-130 that he filed for me when he was alive was also submitted (see copy of same resubmitted again for your review), proof that we resided together a gas bill bearing his name was sent and last but not least a court disposition [of] his arrest on account of the problems we had. The beatings I received they are in my soul and I do not know how to explain that to you on paper. The only thing I know my children are without their father and I need to work to support them. They are small and I have a long way to go with them. Please review my case again and reconsider denial. He is now dead I am unable to get a declaration from him indicating that he gave me a miserable life.

Even if the petitioner had addressed the director's specific finding regarding her qualifying relationship the statute does not contain any provision to waive the two-year period based upon humanitarian grounds or otherwise. The petitioner does not refute the fact that she was divorced for more than two years at the time the petition was filed. Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act indicates that a self-petitioner must have been a bona fide spouse of a lawful permanent resident "within the past 2 years" and must also demonstrate "a connection between the legal termination of the marriage with the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse."

The evidence contained in the record reflects that more than two years had lapsed between the time the Form I-360 petition was filed and the date of the termination of the petitioner's marriage to her lawful permanent resident spouse. Further, the record contains no evidence to establish a connection between the termination of the marriage and the claimed battery or extreme cruelty. The statute contains no provision which would allow for a waiver of these two requirements.

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.