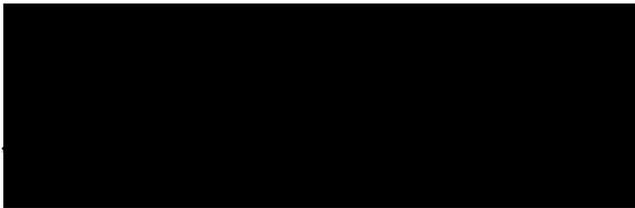


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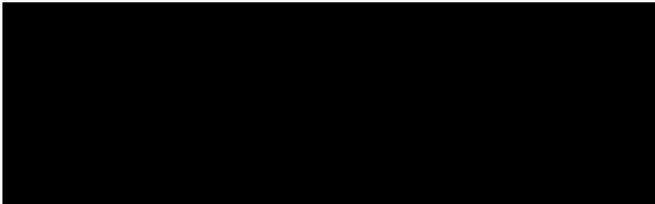
Office: VERMONT SERVICE CENTER

Date: DEC 14 2005

IN RE: Petitioner: 

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.

2 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 The decision of the director will be withdrawn and the petition will be remanded to the director for further action and consideration.

The petitioner is a native and citizen of Mexico 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.

On January 31, 2005, the director denied the petition, finding that the petitioner failed to establish that she had been a spouse of a United States citizen within two years of the filing of the instant petition.

On appeal, counsel for the petitioner submits a brief.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that —

(aa) the marriage or the intent to marry the United States citizen 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.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part:

(II) For purposes of subclause (I), an alien described in this subclause is an alien —

* * *

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and —

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen 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;

(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.

According to the evidence on the record, the petitioner married her citizen spouse on December 30, 1999 in Illinois. The petitioner's marriage to the citizen spouse was legally terminated on May 30, 2002. On June 1, 2004, 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 U.S. citizen spouse during their marriage. The director denied the petition, finding that more than two years had passed between the date of the legal termination of the marriage and the date of the filing of the instant petition.

The sole issue to be addressed in this proceeding is whether the petitioner filed the instant petition within two years of the legal termination of her marriage to her citizen spouse. Counsel for the petitioner asserts that the deadline for filing the petition fell on May 30, 2004, and that the deadline was tolled until June 1, 2004, because May 30, 2004 fell on a Sunday, and May 31, 2004 was a legal holiday.

In *Lagandaon v. Ashcroft*, 383 F.3d 983 (9th Cir. 2004), the 9th Circuit Court held "a year, other than a leap year, is 365 days." The petitioner's marriage was legally terminated on May 30, 2002. The year of 2004 was a leap year. Two years lapsed from the date of the termination on May 29, 2004.

The regulation at 8 C.F.R. § 1.1(h) provides:

The term day when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

Accordingly, since May 29, 2004 was a Saturday, and the following days were a Sunday and a legal holiday, respectively, the deadline for filing the self-petition was tolled until Tuesday, June 1, 2004. As, the petitioner's Form I-360 was timely filed on June 1, 2004, the director's decision is withdrawn. However, the director failed to evaluate whether the petitioner meets all of the eligibility requirements of the Act and regulations and whether the petition is otherwise approvable. Therefore, this matter will be remanded for further action and consideration. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.