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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]
EAC 01 235 52096

Office: VERMONT SERVICE CENTER

Date: FEB 16 2005

IN RE:

Petitioner:

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.

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 (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 director denied the petition after determining that the petitioner failed to submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, the petitioner asserts that she did provide the requested documents. She submits additional documentation.

The regulation at 8 C.F.R. § 204.2(c)(1) 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 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 child¹; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petitioner indicated on the Form I-360 Petition that she entered the United States on February 1, 1990. While the marriage certificate of the petitioner is not contained in the record, the petitioner stated that she married her permanent resident spouse on February 3, 1990, in Mexico. On July 23, 2001, a self-petition was filed by the

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a resident alien is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(c), 114 Stat. at 1520-21.

petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, on April 18, 2002, she was requested to submit her marriage certificate issued by a civil authority, and to also submit evidence to establish that she met the requirements of 8 C.F.R. § 204.2(c)(1)(D), (E), and (F). The director listed examples of evidence the petitioner may submit to show that she has resided with her permanent resident spouse, that she has been the subject of extreme cruelty, and that she is a person of good moral character. The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition on August 28, 2002.

On appeal, the petitioner states that she did submit documents requested by the director, and that she is submitting copies of documents previously furnished. She requests reconsideration because she was severely abused and battered by her husband. Subsequent to the appeal, the petitioner submits additional documentation.

PART I

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

Because the petitioner failed to submit evidence of her marriage to the alleged abusive spouse, she was requested on April 18, 2002, to submit her marriage certificate. She was advised that in order for the marriage to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place. The petitioner failed to comply with the request; therefore, the director denied the petition.

On appeal, the petitioner neither submitted the marriage certificate nor addressed the director's request for evidence.

The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B).

PART II

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided with her permanent resident spouse.

Because the petitioner furnished no evidence to establish that she has met this requirement, she was requested on April 18, 2002, to submit additional evidence. The director listed examples of the evidence she may submit to show joint residence. The petitioner failed to comply with the request; therefore, the director denied the petition.

On appeal, the petitioner submits a copy of a lease agreement for an apartment in Salinas, California dated March 1, 1996, joint federal income tax returns for the years 1989, 1990, and 1991, and the United States birth certificates of three children born to the petitioner and her alleged spouse in 1991, 1993, and 1998.

The evidence furnished on appeal is sufficient to establish that the petitioner had resided with her permanent resident spouse, and to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D).

PART III

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) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. § 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on April 18, 2002, to submit additional evidence. The director listed examples of the evidence she

may submit to show that she has been battered by, or has been the subject of extreme cruelty. The petitioner failed to comply with the request; therefore, the director denied the petition.

On appeal, the petitioner asserts, "I was severely abused and battered by my husband." The petitioner, however, did not elaborate on this statement, nor did she submit evidence to corroborate this assertion. The petitioner had previously stated that she "feared that he would batter me and that marriage would get even worse." The petitioner now claims on appeal that she was severely abused and battered. The petitioner raises questions of credibility when asserting a substantially revised claim to eligibility on appeal. This new assertion is inconsistent with statements previously made by the petitioner. Only after the petition was denied did the petitioner claim that she was severely abused and battered by her husband. Furthermore, the petitioner's assertions are too vague to establish that she was battered by or subjected by extreme cruelty by her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

PART IV

8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or State in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing date of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

Because the petitioner furnished no evidence to establish that she has met this requirement, she was requested on April 18, 2002, to submit additional evidence. The director listed examples of the evidence she may submit to show that she is a person of good moral character. The petitioner failed to comply with the request; therefore, the director denied the petition.

On appeal, the petitioner neither submitted evidence of her good moral character nor addressed the director's request for evidence.

The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

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.