



U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 13 2005  
EAC 00 248 30538

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:  
[REDACTED]

**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.

*for* 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 Guatemala who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of 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, finding that the petitioner failed to establish she was the spouse of a lawful permanent resident of the United States.

Sections 204(a)(1)(A)(iii) and (B)(ii) of the Act provides, respectively, that an alien who is the spouse of a United States citizen or lawful permanent resident, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her 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.

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 in the United States 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 contained in the record, the petitioner married [REDACTED] on August 8, 1980 in Zacapa, Guatemala. On August 20, 1992, the petitioner filed a Form I-589, Request for Asylum in the United States. On October 17, 1997, the reviewing officer found that petitioner ineligible for asylum status and referred the petitioner's case to an Immigration Judge. On October 20, 1997, a Notice to Appear was issued to the petitioner. On August 26, 1998, the petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her spouse. The petition was denied on May 2, 2000, as the director determined the petitioner failed to establish that her spouse was a citizen or lawful permanent resident of the United States. The instant self-petition was filed on August 7, 2000.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to establish that she is the spouse of a citizen or lawful permanent resident of the United States.

As the record contained no evidence of the petitioner's spouse's United States citizenship or lawful permanent residence, the director denied the petition on November 13, 2000.

On appeal<sup>1</sup>, the petitioner submits a copy of her spouse's California driver's license and a copy of his Temporary Resident Card.

In review, we find this evidence insufficient to overcome the director's ground for denial and to establish that the petitioner is married to a citizen or lawful permanent resident of the United States. A state issued driver's license is not evidence that the petitioner's spouse is a citizen or lawful permanent resident of the United States. Further, although we do not dispute that the petitioner's spouse was, at one time, granted status as a temporary resident of the United States, such temporary status is not tantamount to a status as a lawful permanent resident.<sup>2</sup> Regardless, Citizenship and Immigration Service records reflect that the petitioner's spouse's temporary status was subsequently terminated and that he was removed from the United States.

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.

<sup>1</sup> As we are unable to determine the actual filing date of the petitioner's appeal, in this instance, we will presume a timely filing and adjudicate the case on its merits.

<sup>2</sup> See 8 C.F.R. § 245a.3 which describes the process by which an alien who has been granted lawful temporary status may apply for lawful permanent resident status.