

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



13 2005

FILE:



EAC 04 046 52996

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:



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 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.

The director denied the petition, finding that the evidence contained in the record did not establish eligibility.

On appeal, the petitioner submits additional evidence.

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 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 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.

The record reflects that the petitioner's spouse filed a Form I-130 on the petitioner's behalf on March 20, 1998. The petition was approved on October 10, 2001. On December 8, 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to establish that she has resided with the citizen or lawful permanent resident spouse, that she entered into the marriage in good faith, 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, and is a person of good moral character.

Because the director determined the petitioner furnished insufficient evidence to establish that she resided with the citizen, that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the spouse during the marriage, that she entered into the marriage in good faith, and that she is a person of good moral character, the director requested the petitioner to submit additional evidence on August 19, 2004. The director listed evidence the petitioner could submit to establish each of these claims.

The petitioner did not respond to the director's request and the director denied the petition on January 11, 2005 finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits evidence related to the alleged abuse she suffered and her good moral character and indicates that she did not send the information on time because she did not have "a stable address". No evidence was submitted to establish that she resided with her spouse and that she entered into the marriage in good faith. Regardless, we do not find the petitioner's excuse of an unstable address warrants a reversal of the director's decision.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Accordingly, the AAO will not consider this evidence for any purpose and the appeal will be adjudicated based upon the record of proceeding at the time of the director's decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

At the time of the director's decision, the record contained the following evidence:

- The petitioner's spouse's court disposition.
- A copy of the spouse's Permanent Resident Card.

Despite the director's specific request for evidence, the petitioner did not provide any additional documentation until the filing of the appeal. If the petitioner had wanted the submitted evidence to be considered, she should

have submitted the documents in response to the director's request for evidence, not on appeal. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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.