

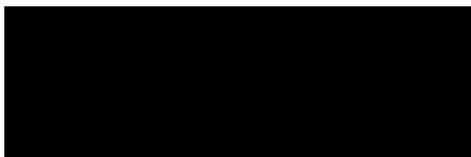


U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

B9



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 30 2005
EAC 03 239 55708

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:



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 Acting Director (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, finding that the petitioner failed to establish that she was the spouse of a citizen or lawful permanent resident of the United States.

Sections 204(a)(1)(A)(iii) and (B)(ii) of the Act provide, 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 [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen or lawful permanent resident 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 3, 1996 in Los Angeles, California. On August 14, 1996, the petitioner's spouse filed a Form I-130 in her behalf. The petition was approved on September 25, 1996. According to the petition for divorce, filed on April 19, 2002, the petitioner and her spouse were separated in 1997. On December 15, 1997, the petitioner's spouse's permanent resident status was terminated and he was ordered removed from the United States. The petitioner's divorce became final on October 29, 2002. On August 21, 2003, 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 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.

Further, the regulation at 8 C.F.R. § 204.2(c)(1)(iii) states, in pertinent part:

Citizenship or immigration status of the abuser. The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States *when the petition is filed and when it is approved.* Changes in the abuser's citizenship or lawful permanent resident status *after* the approval will have no effect on the self-petition

As indicated above, the petitioner's spouse's permanent resident status was terminated in December 1997. Accordingly, at the time the petitioner filed her petition, her spouse was not a lawful permanent resident of the United States.

On appeal, counsel for the petitioner argues that the petitioner's spouse's "deportation was a direct result of sexually abusing his step-daughter" and that the petitioner "was not aware that [her spouse] had lost his lawful permanent resident status." Counsel then argues, "it was never Congress intent to prevent [the petitioner] from reporting the sexual abuse to the police in order to keep her eligibility for relief under VAWA [Violence Against Women Act of 1994, P.L. 106-386]."

We are not persuaded by counsel's arguments. In this instance, the petitioner's spouse was convicted on August 18, 1997. The petitioner waited more than six years after she first discovered her spouse's sexual abuse of her daughter and his subsequent conviction to file the petition. There is no provision whereby an alien may self-petition based upon a spousal relationship despite the termination of the petitioner's spouse's lawful immigrant status. The petitioner's lack of awareness of her spouse's status is immaterial. We are bound by the clear language of the statute and do not have any authority to waive the requirement that in order to establish her eligibility, the petitioner must be the spouse of a lawful permanent resident of the United States or a United States citizen.

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.