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U.S. Citizenship
and Immigration
Services

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BA



FILE: [Redacted]
EAC 04 126 53175

Office: VERMONT SERVICE CENTER

Date: MAY 18 2005

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:

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 50-year old female native and citizen of the 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 had a qualifying marriage with her lawful permanent resident spouse, that she is eligible for classification based upon that qualifying relationship, that she resided with her lawful permanent resident spouse during the marriage, that she entered into her marriage in good faith, that she has been battered or the subject of extreme cruelty perpetrated by permanent resident spouse, and that she is a person of good moral character.

The petitioner submits a timely appeal.

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, 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 . . . 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 regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

Good Faith Marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

According to the information contained on the petitioner's Form I-360, the petitioner wed lawful permanent resident Manuel De La Cruz in Pomona, California on November 10, 1990. On March 12, 2004, a self-petition was filed by the petitioner 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. According to the Form I-360, the petitioner and her lawful permanent resident spouse resided together from November 1989 until December 1999.

Because the petitioner furnished insufficient evidence to establish eligibility, she was requested on October 27, 2004, to submit additional evidence to establish that she had a qualifying marriage with her lawful permanent resident spouse, that she is eligible for classification based upon that qualifying relationship, that she resided with her lawful permanent resident spouse during the marriage, that she entered into her marriage in good faith, that she has been battered or the subject of extreme cruelty perpetrated by permanent resident spouse, and that she is a person of good moral character. The director listed evidence the petitioner could submit to establish each of these claims. The director also requested evidence of the legal termination of the petitioner's marriage if she was no longer married to her lawful permanent resident spouse.

On November 22, 2004, the petitioner provided her response to the director's request. As additional evidence, the petitioner submitted copies of four pictures, a GTE bill in the petitioner's name, a receipt issued to the petitioner's lawful permanent resident spouse, a letter from the Internal Revenue Service (IRS) addressed to the petitioner and her lawful permanent resident spouse, and five affidavits.

The director denied the petition on December 20, 2004, after reviewing and discussing the evidence submitted into the record. The director specifically noted the absence of the petitioner's marriage and/or divorce decree and evidence of the petitioner's good moral character.

With the submission of her timely appeal, the petitioner also submits a copy of her marriage certificate, divorce certificate, and police clearance from the Rialto, California police department.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). 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. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Even if we considered the petitioner's appellate submission, we note that the petitioner's divorce decree indicates that she and her lawful permanent resident spouse were divorced on December 27, 1999.

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)(B)(ii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a lawful permanent resident of the United States is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. *Johnson v. United States*, 529 U.S. 694, 702 (2000); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Considering the Form I-360 petition under the 2000 amendments to the Act, the evidence reflects that more than two years had lapsed between the time the Form I-360 petition was filed and the petitioner terminated her marriage to her permanent resident spouse.

For this additional reason, the petition may not be approved.

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.