

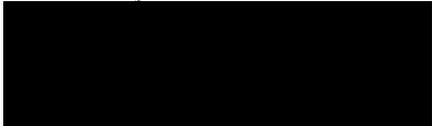


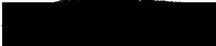
U.S. Citizenship
and Immigration
Services

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FILE: 
EAC 04 225 52493

Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

IN RE: Petitioner: 

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 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 had a qualifying relationship as the spouse of a lawful permanent resident of the United States.

Sections 204(a)(1)(B)(ii) of the Act provides 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 [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the 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.

Service records indicate that the petitioner's spouse, [REDACTED] permanent resident status was terminated on January 26, 1999, when he was ordered removed from the United States. The petitioner married Mr. [REDACTED] on November 13, 2001 in Indiana. A subsequent appeal to the Board of Immigration Appeals (BIA) regarding [REDACTED] permanent resident status was summarily affirmed on July 15, 2002 and the final order of removal was issued. On July 30, 2004, the petitioner filed the instant 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 permanent resident spouse. The petition was denied on February 28, 2005, as the director determined the petitioner failed to establish that her spouse was a lawful permanent resident of the United States.

On the Form I-290B filed on the petitioner's behalf,¹ the petitioner indicates that she is sending a brief and or additional evidence to the AAO within 30 days and states the following as the reason for the appeal:

Oswaldo Alves was ordered removed from the United States on January 26, 1999. However, [REDACTED] appealed the decision. The appeal was denied in July of 2002. Technically, Mr. [REDACTED] was lawfully within the United States pending the outcome of his appeal.

No further evidence has been received on appeal.

We do not dispute the fact that the order to remove [REDACTED] was not final until a decision was made on the appeal filed before the BIA. However, the BIA's determination affirming [REDACTED] removal order was made on July 15, 2002, more than two years prior to the filing of the instant petition. In accordance with section 204(a)(1)(B)(II)(aa)(CC)(aaa) of the Act, in instances where the petitioner's spouse loses his or her permanent resident status, the petitioner may still be eligible to file if the petitioner's spouse "lost status *within the past 2 years* due to an incident of domestic violence."

As the petitioner filed the Form I-360 petition more than two years after the BIA's July 15, 2002 decision to affirm of her spouse's removal order, the petitioner does not meet the eligibility requirements for this classification.

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.

¹ Although the appeal was filed by attorney Charles White on behalf of the petitioner, the record does not contain a Form G-28 as notice of Mr. [REDACTED] appearance on appeal. Despite a message left by the AAO at the number indicated for Mr. [REDACTED] no G-28 has been submitted to the AAO. Accordingly, we do not recognize counsel and consider the petitioner to be self-represented.