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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9

FILE: [REDACTED]  
EAC 03 209 52814

Office: VERMONT SERVICE CENTER

Date: SEP 23 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the preference visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Peru who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse during the marriage.

On appeal, the petitioner submits additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a 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 . . . 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 last entered the United States as a B-2 nonimmigrant visitor on March 5, 2001. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on November 29, 2000 in San Francisco, California. On May 20, 2002, the petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. The district director denied the Form I-130 petition on July 29, 2003 due to abandonment. On July 9, 2003, the petitioner filed a 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 U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish 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; 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.

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

Because the petitioner furnished insufficient evidence to establish that she has resided with her spouse, and has been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that she had resided with her spouse.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. The director noted numerous discrepancies as to when and where the petitioner and her spouse resided together.

On appeal, the petitioner submits a letter of explanation and six letters of friends of acquaintances to clarify discrepancies.

Some of the discrepancies in the evidence are noted here:

- The petitioner indicated on the Form I-360 that she had lived with [REDACTED] from June 1994 until December 5, 2000. She further indicated that the last address at which she lived with her spouse was at [REDACTED] California until December 5, 2000.
- According to her marriage certificate, the bride (petitioner) and groom resided together at [REDACTED] November 29, 2000.
- According to information provided on the Form I-130, the petitioner resided at [REDACTED] Burlingame, California and her spouse resided at [REDACTED] New York

as of October 22, 2001. On her Form I-765, the petitioner stated that she resided in Burlingame as of October 22, 2001. According to the petitioner's G-325A dated October 22, 2001, she resided at [REDACTED] San Mateo, California from March 2001 until October 2001, and from November 2001, she resided at various locations in California. On an amended Form G-325A, the petitioner indicated that she lived at [REDACTED] San Mateo, California from December 2001 through May 20, 2002, the date of the amendment. The petitioner's spouse indicated on his Form G-325A that he resided [REDACTED] New York, New York from 1989 through October 22, 2001 but that "most of the time [he is] traveling because [of his] social work in Cusco, Peru."

- In response to the RFE, the petitioner submitted a petition, captioned "memorial certificate of the truth," in which 36 individuals signed a statement providing that the petitioner and her spouse resided together as husband and wife for approximately 8 years between 1993 and 2001 at two residences in Cusco, Peru.

On the Form I-360, the petitioner indicated that she and her spouse last resided together at [REDACTED] San Bruno, California until December 5, 2000. The petitioner submitted additional evidence indicating that she and her spouse resided together in Cusco, Peru for 8 years between 1993 and 2001. Further, the petitioner's spouse indicated on his G-325A form that he resided in New York City from January 1999 until October 2001, which is inconsistent with the evidence indicating that they lived together in Peru in those years. According to the petitioner's marriage license, she and her husband resided together at [REDACTED] California on November 29, 2000.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to resolve the inconsistencies in the record. Based on the conflicting information regarding the cities, countries and dates that the petitioner and her husband resided together, the petitioner has not established that she resided with her U.S. citizen spouse in accordance with 8 C.F.R. § 204.2(c)(1)(i)(D).

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.