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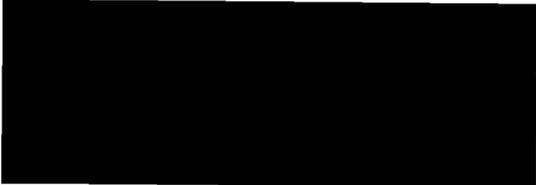
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room 3000
Washington, DC 20529



U.S. Citizenship
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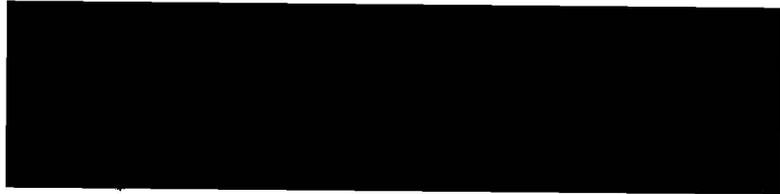
WAC 98 083 54638

Office: VERMONT SERVICE CENTER

Date: AUG 03 2006

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, Chief
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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

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, that she is eligible for classification based upon that relationship, and that she is a person of good moral character.

The petitioner files a timely appeal.

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.

According to the record, the petitioner claims that she married lawful permanent resident [REDACTED] in Mexico on July 24, 1996. On January 26, 1998, 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 permanent resident spouse. The petition was rejected by the Service on January 29, 1998 because the petitioner failed to provide the proper fee for the filing of the petition.¹ Service records reflect that Mr. [REDACTED], permanent resident status was terminated on January 28, 1999, when he was ordered removed from the United States. On March 29, 2002, the petitioner filed a second Form I-360. The petition was denied by the director on January 4, 2006, without the issuance of a notice of intent to deny,² based upon a determination that the petitioner did not have a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she was not eligible for classification based upon that relationship. Specifically, the director determined that because the petitioner's spouse lost his permanent resident status more than two years prior to the filing of the petition, the petitioner could not meet the eligibility requirements of section 204(a) of the Act. Additionally, the director determined that the petitioner failed to establish that she is a person of good moral character.

On appeal, the petitioner states:

On January 14, 1998 I filed my I-360 petition . . . during the last 7 years the service requested documentation and I responded.

According to the Immigration Court my husband was removed on January 28, 1999.

¹ The regulation at 8 C.F.R. § 103.2(a)(7) indicates that an application or petition that is stamped to show the time and date of actual receipt shall be regarded as properly filed when so stamped if it is signed and executed *and contains the required filing fee*. An application or petition that is not properly signed *or is submitted with the wrong filing fee shall be rejected* and will not retain the filing date.

² The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Therefore, I hereby appeal because when I filed my case I was still married to him and his status was that of a Permanent Resident Alien.

The fact that he was detained was because of the injuries to me and the child abduction and was convicted of felonies which caused the removal, this supports my reason for requesting my petition.

Additionally, it is not my fault that the service has taken 8 years to come to a decision.

I request that my case be heard and considered also for humanitarian reasons.

We are not persuaded by the petitioner's appellate submission and find that it does not overcome the grounds for denial. First, the petitioner does not address the director's finding regarding the petitioner's failure to establish her good moral character and submits no further evidence. Second, while the petitioner correctly indicates that her Form I-360 was filed while her spouse was a permanent resident, as noted previously, that petition was rejected because the petitioner failed to submit the proper fee. Therefore, contrary to the petitioner's assertion that it has taken the Service 8 years to decide her case, the petitioner's first Form I-360 was rejected more than 8 years ago. Further, although the petitioner claims that she has responded to the Service's requests during the last seven years, the record does not reflect any action until the filing of the petitioner's second Form I-360 in 2002, after the petitioner's spouse had already lost his permanent resident status.

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." In this instance, as correctly determined by the director, the petitioner's Form I-360 was not filed within the two-period after her spouse lost his status. The statute does not provide for any exceptions based upon humanitarian reasons as requested by the petitioner.

Despite our support of the director's findings however, the director's decision cannot stand because of the director's failure to issue a Notice of Intent to Deny to the petitioner prior to the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

In addition to the grounds for denial noted by the director, we find the record does not contain documentary evidence of the petitioner's marriage to Mr. [REDACTED]. The lack of such documentation further disqualifies the petitioner from establishing that she is the spouse of a lawful permanent resident of the United States and that she is eligible for classification based upon that relationship.

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 director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.