

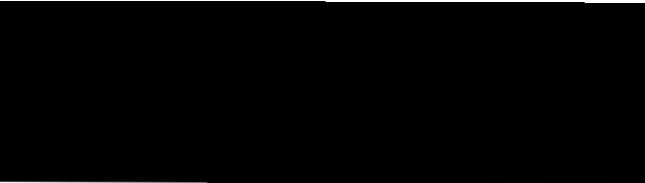
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



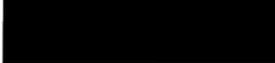
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:



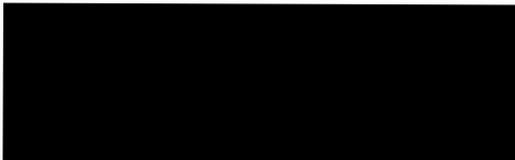
Office: VERMONT SERVICE CENTER

Date: AUG 10 2006

EAC 03 018 50902

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:



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 Acting Vermont Service Center Director denied the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

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 is a person of good moral character.

On appeal, counsel for the petitioner submits additional evidence.

Section 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 may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that she is eligible to be classified as an immediate relative under section 201(b)(2)(B) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

The petitioner married her lawful permanent resident spouse [REDACTED] on February 7, 1997 in North Carolina. On October 15, 2002, 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 lawful permanent resident spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

Finding the evidence insufficient, on May 5, 2003, the director asked the petitioner to submit evidence of her husband's immigration status, evidence of her good moral character, evidence that the petitioner or her child had been the subject of battery or extreme mental cruelty committed by her spouse; and evidence that she had resided with her spouse. On June 26, 2003, the petitioner requested a 180-day extension. On September 12, 2003, the director granted the petitioner a 60-day

extension. On October 4, 2003, the petitioner submitted a psychosocial evaluation to Citizenship and Immigration Services (CIS).

On appeal, the petitioner submits her own affidavit stating that she was unable to obtain a police clearance because she lacks a social security number. The petitioner did not submit evidence to establish that a social security number is a prerequisite to obtain a police clearance. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). She failed to establish that she is a person of good moral character. She is thus ineligible for classification under section 204(a)(1)(B)(ii) of the Act, and her self-petition must be denied.

Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

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-petition, 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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review. On remand, the director should review the evidence in the record to determine whether the petitioner established that she entered into the marriage in good faith, that she resided with her former spouse, and that she was battered by, or subjected to extreme cruelty by, her former spouse during their marriage.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.