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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 05 085 52168

Office: VERMONT SERVICE CENTER

Date: FEB 02 2006

IN RE: Petitioner: [Redacted]

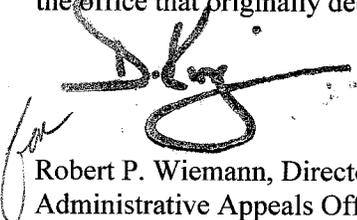
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[Redacted]

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

The petitioner in this case is a native and citizen of El Salvador who seeks 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)(A)(iii), as an alien subjected to battery or extreme cruelty by her United States lawful permanent resident spouse. The director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a lawful permanent resident of the United States. On appeal, counsel submits a two-page brief and a local police clearance letter for the petitioner. Counsel's claims and the evidence submitted on appeal do not overcome the basis for denial and the appeal will be dismissed for the reasons discussed below.

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 may self-petition for preference 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 by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(CC) of the Act states, in pertinent part, that an alien who is no longer married to a U.S. lawful permanent resident may still file for classification under section 204(a)(1)(B)(ii) of the Act if he or she is an alien:

who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse

Pursuant to the statute, a former spouse of a lawful permanent resident must file his or her petition within two years of the divorce. Accordingly, Citizenship and Immigration Services (CIS) policy requires the alien to submit proof that the legal termination of his or her marriage occurred within the two-year period immediately preceding the filing of his or her petition. Memo. From [REDACTED], Exec. Assoc. Commr., Off. of Field Operations, *Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or Lawful Permanent Resident Within Two Years of Divorce*, 2, (Jan. 2, 2002).

In this case, the record shows that the petitioner married Ramon Gutierrez, a lawful permanent resident of the United States, on March 31, 1994 in California and that a judgment of dissolution of their marriage was entered on January 28, 2003 in the Los Angeles Superior Court. The petitioner's Form I-360 was filed on February 1, 2005, more than two years after her marriage was legally terminated. On appeal, counsel states that the petitioner's Form I-360 was mailed on January 27, 2005, the day before the second anniversary of her divorce. The so called "mailbox rule" does not apply to these proceedings. A petition is not properly filed with CIS until it is received in a CIS office and stamped with the time and date of actual receipt. 8 C.F.R. § 103.2(a)(7). The

petitioner's Form I-360 was received by the Vermont Service Center on February 1, 2005 and was stamped as received on that date at 11:03 p.m. Because the petition was filed more than two years after the petitioner was divorced from her former lawful permanent resident spouse, she is ineligible for classification as a preference immigrant pursuant to section 203(a)(1)(B)(ii) of the Act and her petition must therefore be denied.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Consequently, the appeal is dismissed.

ORDER: The appeal is dismissed.