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FILE: [REDACTED]
EAC 01 063 50041

Office: VERMONT SERVICE CENTER

Date: JAN 10 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:

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 Director, Vermont Service Center, denied the immigrant visa petition and the matter 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 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)(B)(ii), as an alien subjected to battery or extreme cruelty by her United States lawful permanent resident spouse. The director denied the petition because Citizenship and Immigration Services (CIS) records show that the petitioner's husband was deported from the United States and lost his lawful permanent resident status more than two years before her petition was filed. On appeal, the petitioner states, "My husband is a Legal Resident. I have orders against him and have no contact with him, I submitted his alien registration number." The petitioner also submits an affidavit and copies of documents previously submitted with her appeal. The petitioner's claim and the evidence submitted on appeal do not show that her husband has regained lawful permanent resident status, nor do they otherwise overcome the petitioner's ineligibility for classification as a special immigrant under section 204(a)(1)(B)(ii) of the Act. The appeal will therefore be dismissed.

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 he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into 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 he or she is eligible to be classified as the spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) 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).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a U.S. lawful permanent resident is eligible to self-petition under these provisions if he or she is an alien:

(CC) 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.

An alien whose spouse lost lawful permanent resident status is thus only eligible to self-petition for immigrant classification if his or her spouse lost status within the two years directly preceding the filing of the petition and if the spouse's status was lost due to an incident of domestic violence. Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC). *See also* Memo. from Michael Aytes, Acting Assc. Dir., Domestic Operations, U.S. Citizenship and Immigration Services, *Eligibility to Self-Petition as a Battered Spouse or Child of a U.S. Citizen or Lawful Permanent Resident Within Two Years of the Abuser's Loss of Status*, (Oct. 31, 2005).

In this case, the record shows that the petitioner married [REDACTED] on December 21, 1989. According to CIS records, Mr. [REDACTED] became a lawful permanent resident of the United States on December 8, 1988. On August 23, 1996 an Immigration Judge ordered Mr. [REDACTED] deported from the United States and Mr. Sepulveda consequently lost his lawful permanent resident status on that date. The petitioner filed her Form

I-360 on December 14, 2000, four years after her husband's loss of status. Because the petitioner's spouse lost his lawful permanent resident status over two years before this petition was filed, the petitioner is ineligible for immigrant classification under section 204(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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.