

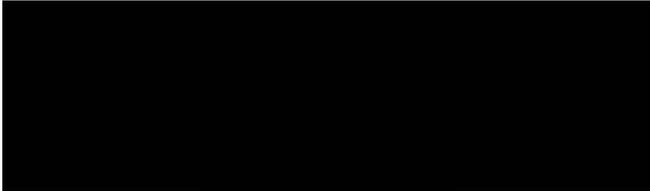
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FILE:

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Date: JUL 12 2006

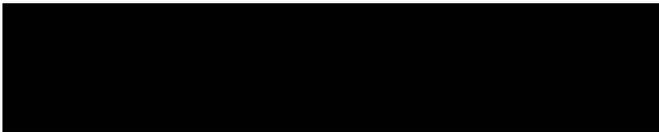
IN RE:

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:



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

The petitioner is a native and citizen of Nigeria 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 because her spouse lost his lawful permanent resident status based upon being part of a conspiracy to defraud the government, rather than an incident involving domestic violence.<sup>1</sup>

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;

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<sup>1</sup> Section 204(a)(1)(B)(II)(aa)(CC)(aaa) of the Act indicates that 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.*"

(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 married lawful permanent resident [REDACTED] on August 6, 1994 in Randallstown, Maryland. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on December 28, 1995. The Form I-130 was initially approved on June 20, 1996, but was subsequently revoked on August 25, 2003.

On May 9, 2002, the petitioner filed the instant self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his permanent resident spouse. The director issued a notice of intent to deny the petition on November 18, 2004 and denied the petition on June 24, 2005 finding that the petitioner failed to establish a qualifying relationship as the spouse of a lawful permanent resident of the United States.

On appeal, counsel argues that director failed to follow "its own proper procedures" in denying the petition. Counsel states:

Neither the applicant nor her attorney of record [REDACTED] . . . EVER received any Notice of Intent to Deny the Form I-360. Neither the applicant nor her attorney . . . ever received the denial letter. Instead, the VSC mailed the denial letter to . . . an attorney who briefly represented the applicant several years ago. [REDACTED] Filed the instant Form I-360 petition . . . reflecting Mr. [REDACTED] as the attorney of record. Mr. [REDACTED] submitted a Form G-28 and has remained the applicant's attorney of record since that time.

We are not persuaded by counsel's argument. Upon review of the record, we find that although current counsel, [REDACTED] represented the petitioner at the time of filing the Form I-360 petition, he did not represent the petitioner at the time the Notice of Intent to Deny and the denial were issued. Despite counsel's claim that he represented the petitioner since the time of filing the Form I-360, the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated September 4, 2003, indicating the petitioner's representation by [REDACTED] of Catholic Charities. The regulation at 8 C.F.R. § 292.4(a) states, in pertinent part, that:

During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, *or upon notification of the new attorney or representative.*

Ms. [REDACTED]'s Form G-28, dated September 4, 2003, superseded Mr. [REDACTED]'s Form G-28 which was dated April 10, 2002.<sup>2</sup> Accordingly, the director's issuance of the Notice of Intent to Deny and the denial to Ms. [REDACTED] rather than Mr. [REDACTED] was proper as Ms. [REDACTED] was counsel of record at that time.

Counsel's second argument that the statute should be "liberally construe[d]" is equally unpersuasive. Counsel states:

[The petitioner's spouse's] loss of status was due to his criminal activity, which is evidence of his abusive nature towards his wife. His fraudulent actions which resulted in his conviction contributed to his several emotional abuse of his wife.

We find no connection between the petitioner's spouse's conviction for conspiracy to defraud the government with respect to false and fraudulent claims and the petitioner's claim of being battered and subjected to extreme cruelty. In instances where a petitioner seeks eligibility based upon a spouse who has lost permanent resident status, the statute requires the spouse's loss of lawful permanent resident status to be *due to an incident of domestic violence*. While counsel asserts that the petitioner's spouse's conviction for his fraudulent actions contributed to the petitioner's "several emotional abuse," the record contains no evidence which demonstrates that the petitioner's spouse lost his status due to an incident of domestic violence.

Accordingly, we agree with the finding of the director that the petitioner has failed to establish that she has a qualifying relationship as the spouse of a permanent resident of the United States.

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 appeal is dismissed.

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<sup>2</sup> It is noted that as Mr. [REDACTED] Form G-28 was not signed by the petitioner, in accordance with the regulation at 8 C.F.R. § 292.4(a), the Service should not have recognized Mr. [REDACTED]'s appearance at that time.