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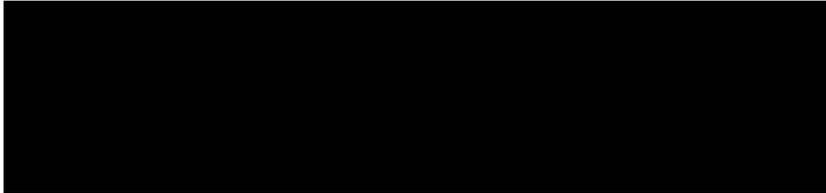
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 17 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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, Chief  
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 seeks classification as a preference 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 battered or subjected to extreme cruelty by her spouse who was formerly a lawful permanent resident of the United States.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a U.S. lawful permanent resident and her eligibility for preference immigrant classification based on such a relationship.

On appeal, counsel submits a brief and 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 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 or the alien's child 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 a 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).

An alien whose spouse has lost lawful permanent resident status may still self-petition under this provision if his or her spouse "lost status within the past 2 years due to an incident of domestic violence." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section . . . 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident.]

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states on the Form I-360 that she entered the United States in August 1995. On March 27, 1997, the petitioner married [REDACTED] in New Mexico. At that time, the petitioner's spouse was a U.S. lawful permanent resident. On April 5, 1999, the El Paso, Texas Immigration Court ordered the petitioner's spouse removed from the United States and the petitioner's spouse waived appeal and lost his lawful permanent resident status on that date. The petitioner filed this Form I-360 on April 5, 2001. On December 22, 2005, the director issued a Notice of Intent to Deny (NOID) the petition because the record did not show that the petitioner's husband was a lawful permanent resident at the time she filed the petition and did not establish that the loss of the petitioner's husband's immigrant status was due to an incident of domestic violence. Counsel timely responded with additional evidence. On May 31, 2006, the director denied the petition for lack of the requisite qualifying relationship and eligibility for preference immigrant classification based on such a relationship. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that the petitioner's husband's loss of immigrant status was connected to his domestic violence against the petitioner because he lost his status due to his alcoholism and would beat the petitioner while intoxicated. The record does not demonstrate such a causal relationship and we concur with the director's determination.

Citizenship and Immigration Services (CIS) records show that the petitioner's husband was ordered removed pursuant to section 237(a)(2)(A)(iii) of the Act due to his conviction for an aggravated felony. The records show that in 1996, the petitioner's husband was convicted of distribution of a controlled substance in New Mexico and that in 1998, he was convicted of escaping from jail in New Mexico. The underlying offenses occurred in February 1995 and December 1997, respectively.

The evidence in this case does not indicate that domestic violence was involved in either of the underlying criminal offenses that resulted in the loss of the petitioner's husband's lawful permanent

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\* Name withheld to protect individual's identity.

residency. In her August 14, 2001 affidavit, the petitioner states that in January 1995, her husband returned to the United States while she remained in Mexico and that she did not see her husband again until she went to the United States in March 1995. The petitioner states that she remained in contact with her husband through frequent telephone calls, but she does not indicate that she even knew of her husband's drug offense in 1995 and his conviction in June 1996. The petitioner also does not discuss in detail any specific incidents of abuse that were connected to her husband's 1997 offense of escaping from jail. After the birth of the couple's daughter on April 30, 1997, the petitioner states, "He kept drinking and abusing me. Forty (40) days after the baby was born the police arrested him again. He was released but went back to jail from late 1997 to 1999." The petitioner's brief account fails to establish a nexus between her husband's domestic violence and his 1997 offense leading to his conviction in 1998.

The petitioner's testimony indicates that her husband battered her and subjected her to extreme cruelty repeatedly between 1994 and 2000. Although the criminal record of the petitioner's husband includes six criminal convictions during this same period, the petitioner's husband was never charged nor convicted of domestic violence. The evidence also does not indicate that the two convictions leading to the petitioner's husband's loss of immigrant status were otherwise due to an incident of domestic violence. Their temporal concurrence alone does not establish a causal connection between the domestic violence and the specific criminal convictions of the petitioner's husband that resulted in his loss of lawful permanent residency.

On appeal, counsel claims that there is a causal relationship between the petitioner's husband's loss of immigrant status and the domestic violence because, "[t]he worst incidents of domestic violence would occur after he became drunk. . . . After beating his wife he would get in his car and drive. That is when he would be arrested." The record shows that in 1997, the petitioner's husband was convicted of four driving while under the influence of alcohol (DUI) offenses. However, the record fails to establish a nexus between any of those offenses, specific incidents of domestic violence and the arrests leading to the convictions that resulted in the petitioner's husband's loss of immigrant status.

In fact, the record shows that the only incident of domestic violence that was documented by law enforcement authorities did not result in a prosecution or conviction of the petitioner's husband. The petitioner reports that on January 20, 1996, her husband assaulted her and the guards from their apartment building intervened and called the police. Incident reports from the apartment guards and the police confirm that the petitioner's husband hit her, but that she denied his violence and did not want to pursue charges against him because she feared him. The police report states that the petitioner's husband was arrested for domestic violence (wrongful strike), but the record contains no evidence that this charge was ever filed in court or that the petitioner's husband was ever convicted of domestic violence in connection with the January 20, 1996 conflict or any other incidents. In regards to the January 20, 1996 incident, the petitioner herself states: "He ended up being in jail for approximately 2 months. The reason he was in for so long was because he had a warrant for his arrest for a previous accusation. I don't think he was arrested due to the abuse." Accordingly, the record shows that the only incident of domestic violence reported by the police did not result in a conviction of the

petitioner's husband. As discussed above, the petitioner also fails to establish that domestic violence was otherwise involved in the specific incidents that led to the convictions resulting in her husband's loss of immigrant status.

On appeal, counsel submits a June 2000 report on alcohol and health submitted to Congress by the Secretary of Health and Human Services. The report cites studies finding "an overall relationship between greater alcohol use and criminal and domestic violence, with particularly strong evidence of domestic violence." The report also concludes that "[s]tudies of violent incidents have continued to find that alcohol use often precedes violent events and that the amount of drinking is related to the severity of the subsequent violence." The report supports the petitioner's testimony that her husband's physical abuse almost always occurred when he was intoxicated. The report does not, however, establish that the petitioner's husband's loss of immigrant status was due to an incident of domestic violence. As discussed above, the record does not show that the two offenses that led to the petitioner's husband's loss of immigrant status were due to incidents of domestic violence rather than his unrelated criminal behavior.

Accordingly, the present record does not establish that the petitioner's former spouse lost his lawful permanent resident status due to an incident of domestic violence, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

Because the petitioner did not have a qualifying relationship with a U.S. lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, she also was not eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

The petitioner has not established that she had a qualifying relationship with a lawful permanent resident of the United States and that she was eligible for preference immigrant classification based on such a relationship. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.