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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 24 2007
EAC 06 073 51204

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.

A handwritten signature in black ink, appearing to read "D. G." followed by a long horizontal stroke.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner 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 battered or subjected to extreme cruelty by her former United States lawful permanent resident spouse.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a lawful permanent resident of the United States, that she was eligible for classification based upon that relationship, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into her marriage in good faith.

The petitioner submits a timely appeal.

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).

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.

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

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and

of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* 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 from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-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. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Procedural History and Pertinent Facts

The petitioner is a native and citizen of Mexico. According to the information provided by the petitioner on the Form I-360, the petitioner entered the United States in 1984 without inspection. On January 29, 1990, the petitioner married S-G-A-¹, a lawful permanent resident of the United States, in San Diego, California. On February 13, 1995, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petition was approved on April 10, 1995. The petitioner's marriage to S-G-A- was dissolved on June 18, 1999, by order of the Superior Court of California, County of San Diego, Family Court.² The petitioner filed the instant Form I-360 self-petition on January 9, 2006.

At the time of filing, the petitioner failed to submit any supporting documentation to support her petition. Accordingly, on March 10, 2006, the director issued a Notice of Intent to Deny (NOID). In the NOID, the petitioner was requested to submit, *inter alia*, the following information:

- A statement indicating whether she had remarried since her divorce to her lawful permanent resident spouse and if so, a marriage certificate for the marriage.
- A statement explaining why she failed to include two of her claimed children on the I-360 petition.
- A statement providing the dates and addresses of the petitioner's residence with her spouse and evidence such as leases, mortgage information, tax or financial records, or statements from friends and family members demonstrating a joint residence.
- A statement and evidence regarding the alleged abuse perpetrated against the petitioner by her spouse.

¹ Name withheld to protect individual's identity.

² The record contains a second Form I-130 filed on October 12, 2004, after the approval of the initial Form I-130 and after the termination of the petitioner's marriage.

- Evidence of the petitioner's good moral character, to include a personal statement and a police clearance from all places where the petitioner resided in the three-period prior to filing the petition.
- Evidence to establish that she entered into her marriage in good faith, such as insurance policies, financial and tax information, or statements from friends and family.

The petitioner failed to respond to the director's NOID and the director denied the petition on June 29, 2006, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, that she was eligible for classification based upon that relationship, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into her marriage in good faith.

The petitioner filed a timely appeal on July 28, 2006. On appeal, the petitioner claims that she did not understand the director's request and submits additional evidence. Upon review, as will be discussed, we concur with the determination of the director and find the petitioner's appeal is not sufficient to overcome the director's grounds for denial.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner indicated that she was divorced. Further, the record contained a copy of the Notice of Entry of Judgment indicating that the petitioner's marriage to S-G-A- was dissolved on June 18, 1999, more than two years prior to the filing of the petition. As cited above, section 204(a)(1)(B)(ii)(II)(aa) of the Act indicates that an alien who is no longer married to a U.S. lawful permanent resident at the time of filing remains eligible to self-petition if he or she "was a bona fide spouse of a lawful permanent resident within the past 2 years" and "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." On appeal, the petitioner does not dispute the fact that she was divorced from S-G-A- for more than two years at the time of filing. Accordingly, the petitioner has failed to overcome the findings of the director and to establish that she has a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she is eligible for classification based upon that relationship.

Evidence that the petitioner has resided with her citizen spouse

On the Form I-360, the petitioner failed to indicate the length of time that she resided with her spouse and to provide any other information to establish the locations and dates of her residence with her spouse. Despite the director's specific request for additional evidence, no further evidence related to the petitioner's residence with her spouse was submitted prior to the director's denial. No further testimonial or documentary evidence has been submitted on appeal. Accordingly, the petitioner has failed to overcome the findings of the director and to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

With the initial filing, the petitioner failed to submit any evidence in reference to a claim of abuse, including a personal statement describing the purported abuse. No additional evidence was submitted in response to the director's NOID.

On appeal, the petitioner generally states:

I never though[t] of reporting my ex-husband to the police. He was in charge of everything and I felt guilty of putting him in jail because everyone was blaming me for putting a good man in jail when I didn't even call the police. It was the neighbor the called the police after she saw me crying holding my boy. That was what hurt the most my boy crying begging his daddy to leave me alone, I didn't want my son to live the same life that I have lived with my parents.

The petitioner does not state that she was battered or subjected to extreme cruelty and fails to describe any alleged incident of abuse in detail. While the petitioner submits a copy of a sentencing report which indicates that her ex-husband was ordered to complete a Domestic Violence Recovery Program as well as a document verifying that he completed domestic violence treatment in January 1994, the petitioner has failed to provide any evidence to demonstrate that she was the victim of her spouse's domestic violence and that his sentence and court ordered program relate to abuse that was perpetrated against her. Accordingly, the petitioner has failed to overcome the findings of the director and to establish that she was battered by or subjected to extreme cruelty by her spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner failed to submit any evidence regarding her good moral character either at the time of filing or in response to the director's NOID. The petitioner fails to provide any further documentation on appeal. Without the required police clearance and statement from the petitioner regarding her good moral character, the petitioner has failed to overcome the findings of the director and to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Marriage

With the initial filing, the petitioner failed to submit any evidence, either testimonial or documentary, of her good faith marriage. The petitioner provided no further evidence in response to the director's NOID. The brief statement submitted by the petitioner on appeal does not provide any testimony regarding how she met her spouse, how long they dated, whether the children that she refers to in the record are the product of her marriage with her ex-husband, or any other details to establish that she entered into her marriage with the intent to share a life with her spouse. Accordingly, the petitioner has failed to overcome the findings of the director and to establish that she married her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.