



U.S. Citizenship
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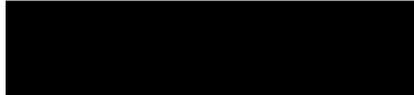
Office: VERMONT SERVICE CENTER

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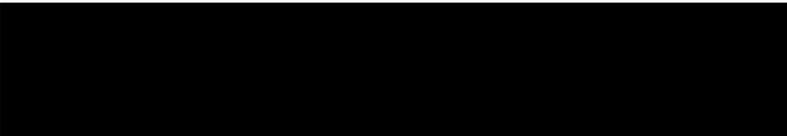
IN RE:

Petitioner:



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:



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 immigrant classification under 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 a lawful permanent resident of the United States.

The director denied the petition for lack of a qualifying relationship with a U.S. lawful permanent resident and eligibility for second-preference immigrant classification based on such a relationship.

On appeal, counsel submits additional evidence. On the Form I-290B counsel indicated that he would submit a brief or evidence to the AAO within 45 days. Counsel dated the appeal September 18, 2006. Over five months later, on March 1, 2007, the AAO notified counsel that it had received no brief or further evidence and requested counsel to submit a copy of any materials previously submitted. On March 2, 2007, counsel informed the AAO that he did not file a brief or further evidence in support of the appeal as he indicated on the Form I-290B.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a U.S. lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of 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 for immigrant classification 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).

An alien who has divorced a U.S. lawful permanent resident is still eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act if the alien 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." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Section 204(a)(1)(J) of the Act also 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].

Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India who entered the United States on July 15, 2001 as the nonimmigrant spouse of a student (F-3). On July 10, 2003, the petitioner's status was changed to that of the nonimmigrant spouse of a temporary worker (H-4). The petitioner married D-G-¹ in India and their marriage was registered in that country on February 28, 1995. On May 13, 2005, the petitioner and D-G- were divorced by order of the County Court of Midland, Texas.

The petitioner filed this Form I-360 on November 25, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the immigration status of the petitioner's former husband. The petitioner, through counsel, timely responded with additional evidence. On April 10, 2006 the director issued a Notice of Intent to Deny (NOID) the petition for lack of a qualifying relationship to a U.S. lawful permanent resident and eligibility for immigrant classification as the spouse of a U.S. lawful permanent resident based on such a relationship. The petitioner did not respond to the NOID and the director denied the petition on the grounds cited in the NOID on August 17, 2006. Counsel timely appealed.

On appeal, counsel states that the petitioner met her burden of proof to establish her former husband's abuse, claims that the petitioner would be ostracized by "Hindu-Indian society" if she were forced to return to India, and requests that we grant her asylum. Counsel's claims are irrelevant to the issues on appeal and counsel does not address the grounds for denial. Accordingly, we concur with the director's determination. We note that the petitioner previously filed an application for asylum that was denied on February 1, 2005. The AAO has no jurisdiction to consider the petitioner's request for asylum.²

Qualifying Relationship

Section 204(a)(1)(B)(ii) of the Act only provides immigrant classification to aliens who have a qualifying relationship with a lawful permanent resident of the United States. The record in this case shows that the petitioner's former husband originally entered the United States on January 5, 2001 as a nonimmigrant student (F-1). The petitioner's husband subsequently changed his status to that of a temporary, nonimmigrant worker (H-1B). The petitioner did not submit evidence that her husband obtained lawful permanent residency in the United States during their marriage. Citizenship and Immigration Services (CIS) records also do not show that the petitioner's former husband has obtained lawful permanent resident status in the United States. Accordingly, the petitioner did not have a qualifying relationship with a U.S. lawful permanent resident, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act.

¹ Name withheld to protect individual's identity.

² The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

Eligibility for Immigrant Classification as the Spouse of a U.S. Lawful Permanent Resident

The record also fails to establish that the petitioner was eligible for immigrant classification under section 203(a)(2)(A) of the Act based on her relationship with her former husband, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immigrant classification under section 203(a)(2)(A) of the Act based on his or her qualifying relationship to a U.S. lawful permanent resident. Because the petitioner's former husband was not a U.S. lawful permanent resident, she did not have the requisite qualifying relationship and was not eligible for immigrant classification under section 203(a)(2)(A) of the Act based on such a relationship.

On appeal, counsel submits records from the Midland, Texas police department, which show that ten calls were made to the police from the petitioner's former marital residence from May 2003 to September 2004. The director determined that the petitioner had established the requisite battery or extreme cruelty. Counsel does not explain what, if any, relevance the police records have to the issues on appeal.

On appeal, counsel also submits letters from three individuals who attest to the petitioner's good character and the difficulties she would face if she were forced to return to India. One of these letters refers to "[REDACTED]" but the record contains no evidence that the petitioner has ever used that name. The remaining letters provide no probative information regarding the issues on appeal. The statute no longer requires that an alien demonstrate that his or her deportation would result in extreme hardship to himself or herself or his or her child in order to be eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. *See* Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, § 1503, 114 Stat. 1464 (2000). In sum, counsel has offered no evidence on appeal that addresses the grounds for denial.

The record fails to establish that the petitioner had a qualifying relationship with her former husband and was eligible for immigrant classification as the spouse of a U.S. lawful permanent resident based on such a relationship. The petitioner is consequently 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.