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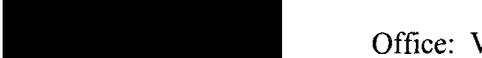


U.S. Citizenship
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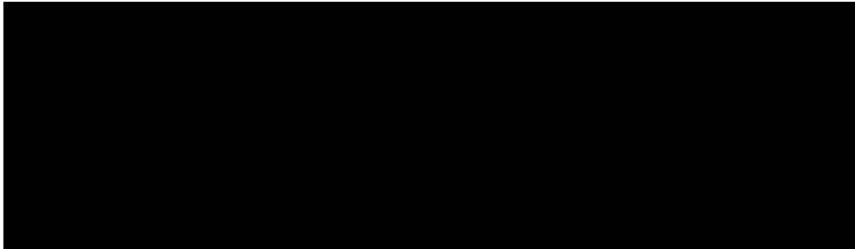
Office: VERMONT SERVICE CENTER

Date: DEC 10 2008

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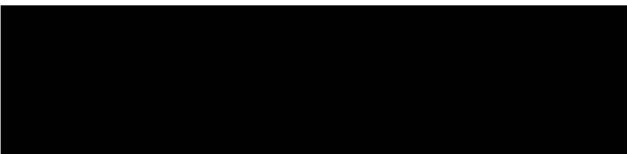
IN RE:

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)

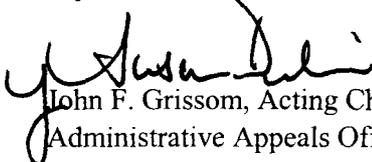
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner seeks classification as an 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 United States lawful permanent resident spouse.

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).

On March 21, 2007, the director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a lawful permanent resident of the United States.

The petitioner submits a timely appeal.

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 lawful permanent resident of the United States 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

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) further 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 standard and guidelines for a self-petition under section 204(a)(1)(B)(i) of the Act are further explained 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 . . .

The petitioner in this matter is a native and citizen of Mexico. The petitioner married M-H-¹ in Mexico on March 9, 1993. At the time of their marriage M-H- was a lawful permanent resident of the United States. According to the records of Citizenship and Immigration Services (CIS) records, M-H- was ordered removed from the United States on July 9, 2003 on the basis of a conviction for violating Chapter 720, at 570, Section 402(c) of the Illinois state law for possession of a controlled substance, to wit: cocaine. On December 13, 2004, M-H-'s appeal of the removal order was dismissed. The petitioner filed the petition that is the subject of this appeal on April 6, 2005.

On December 15, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, noting that the petitioner's spouse did not possess lawful permanent resident status at the time she filed her petition and that the loss of the petitioner's spouse's status was based on a criminal record unrelated to the claimed abuse. The director afforded the petitioner the opportunity to submit further evidence to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and a corresponding eligibility for preference classification when she filed the petition. The petitioner responded to the NOID, through her attorney on February 7, 2007. Upon review of the response, the director denied the petition on March 21, 2007, finding that the petitioner had failed to establish that her spouse's arrest and subsequent deportation was based upon domestic violence.

¹ Name withheld to protect individual's identity

On appeal, counsel for the petitioner asserts that the petitioner's spouse's loss of status is related to his domestic violence against the petitioner. Counsel contends that M-H-'s violence against the petitioner was directly related to M-H-'s use of drugs. Counsel alleges that M-H-'s drug abuse started prior to 2001 as shown by affidavits and that the abuse suffered by the petitioner started prior to January 2005 also as shown by affidavits in the record.² Counsel asserts that the adjudicating officer, when determining whether the alleged abusive spouse's loss of status is related to or is due to an incident of domestic violence, should consider the full history of domestic violence in the case.³ Counsel further asserts that drug abuse and domestic violence are often times "related." Counsel references articles previously submitted to support this assertion. Counsel also urges flexibility when determining whether the drug abuse and domestic violence in this matter are related to implement Congress's intent of protecting battered women and children.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Although the record reflects that M-H- was, at one time, a lawful permanent resident of the United States, he lost his immigrant status on December 13, 2004, the date the Board of Immigration Appeals (BIA) dismissed the petitioner's spouse's appeal. Thus, the petitioner filed the petition within two years of the petitioner's spouse's loss of status. Despite this determination, however, the AAO finds that the petitioner has not established eligibility for the classification. Specifically, the petitioner has failed to establish, in accordance with Section 204(a)(1)(B)(ii)(II)(CC)(aaa) of the Act, that she was a *bona fide* spouse of a lawful permanent resident within the past 2 years *and that her spouse's loss of status within the past 2 years was due to an incident of domestic violence.*

The record reflects that M-H-'s removal from the United States was due to his conviction of a controlled substance related offense, not due to an incident of domestic violence. The record contains no evidence that M-H-'s loss of status and deportation was due to domestic violence. The AAO has reviewed the petitioner's statements, the affidavits in the record, and the articles presented by counsel that indicate drug abuse may lead to domestic violence. In this matter, however, the petitioner has not provided evidence substantiating that her spouse's violence was related to his abuse of drugs. Neither the petitioner's statement nor the affidavits submitted on her behalf contain sufficient detail regarding the circumstances of M-H-'s drug abuse and the alleged violence that resulted from his drug abuse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190

² The record includes an undated statement by [REDACTED] a March 29, 2006 affidavit by Maria [REDACTED] and a February 7, 2007 affidavit by [REDACTED]. The statement and the affidavits do not provide detailed information regarding the alleged abuse or the time frame of the alleged abuse. The record also includes police reports filed January 10, 2005, February 20 and 22, 2005, April 5, 2005, and June 6, 2005 by the petitioner alleging M-H-'s abuse.

³ The record includes the petitioner's statement indicating that her spouse's abuse started in June 1995 and that he was frequently drunk and that his use of marijuana made things worse.

(Reg. Comm. 1972)). Rather, the record reflects that M-H-'s abuse, as documented by police reports filed by the petitioner occurred after M-H-'s order of final removal in December 2004. The AAO has considered counsel's assertions regarding the claimed history of domestic violence perpetrated by the petitioner's spouse against the petitioner but does not find the evidence in the record sufficient to establish a history of violence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record in this matter clearly establishes that the petitioner's spouse loss of status was directly related to a conviction for violating Chapter 720, at 570, Section 402(c) of the Illinois state law for possession of a controlled substance, to wit: cocaine. There is nothing in the record connecting M-H-'s loss of status to a domestic incident or incidents of abuse against the petitioner. Accordingly, the present record does not establish that M-H- 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. Further, as the petitioner did not have a qualifying relationship as the spouse of a lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II) of the Act, she also is 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 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.