



DA

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy



FILE: [Redacted]  
EAC 01 071 53435

Office: Vermont Service Center

Date: DEC 19 2001

IN RE: Petitioner:  
Beneficiary:



APPLICATION: 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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking 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 the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States. The director, therefore, denied the petition.

On appeal, counsel states that the Service denied the petition on the basis that the petitioner did not provide the Service with the alien registration number of her spouse. He asserts, however, that he forwarded to the Service evidence of his efforts to determine the alien registration number, as well as the social security number of the petitioner's spouse. Counsel submits the social security number of the petitioner's spouse and asserts that the Service's failure to act upon the information provided by performing a fundamental and simple computer search in its data base was a denial of due process.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

(i) 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;

(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;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States as an undocumented alien on during 1982. The petitioner married her claimed lawful permanent resident spouse on December 18, 1989 at San Diego, California. On December 26, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) provides that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The director denied the petition after determining that the petitioner failed to submit evidence to establish that her spouse is a citizen or lawful permanent resident of the United States. While counsel asserts on appeal that the Service's failure to act upon the information provided by performing a fundamental and simple computer search in its data base was a denial of due process, the director, in his decision, determined that after reviewing the Service record of the petitioner's spouse, Manuel Saavedra, it cannot be verified in the record that Manuel is a lawful permanent resident as claimed. The petitioner was, therefore, requested on January 18, 2000, to submit evidence as proof of Manuel's status in the United States. The director listed examples of the evidence the petitioner may submit to establish that Manuel is a citizen or lawful permanent resident of the United States. Because the petitioner failed to submit satisfactory evidence to establish this requirement, the director denied the petition.

On appeal, counsel resubmits the social security number of the petitioner's spouse. A social security number, however, is insufficient evidence to establish the immigration status of the petitioner's spouse and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).



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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.