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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 2004
EAC 02 075 51461

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[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.

Marc Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center Director in a decision dated June 29, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Korea 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 United States citizen.

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

> 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 . . . 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; [and]
> >
> > * * *
> >
> > (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

In her decision, the acting director first determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, because according to the evidence on the record, the petitioner had divorced her permanent resident spouse and remarried another United States citizen

prior to the filing of the petition. The acting director determined that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when the alien has remarried and is eligible for lawful status based upon the new marriage.

According to the evidence contained in the record, the petitioner and her first United States citizen spouse were married on September 15, 2000, and divorced on June 11, 2001. The petitioner remarried a second United States citizen on June 14, 2001. The petitioner filed the Form I-360 self-petition on December 26, 2001, more than six months after the termination of the marriage to her abusive husband and her marriage to the new United States citizen.

On appeal, counsel for the petitioner acknowledges, "§204 of the Act does not contain any language that addresses the viability of a petition where remarriage occurs." Counsel argues, however, that as "the statute contains no language that prohibits [the petitioner's] remarriage prior to approval of her self-petition," Citizenship and Immigration Services' (CIS) denial of the petition is "misplaced" and the petitioner should be able to "adjust her status once the petition is approved.

We are not persuaded by counsel's argument. Section 204 of the Act, as amended, does not provide that re-marriage before the self-petition is filed or approved is permitted. There is no provision for the approval of such a self-petition. Section 204(h) of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title." Congress specifically considered that remarriage of an abused spouse would not terminate eligibility once a petition had been approved; by implication, remarriage before filing the Form I-360 petition does terminate eligibility.

Congress's goal in enacting the Violence Against Women Act of 1994 (VAWA) was to eliminate barriers to women leaving abusive relationships. H.R. Rep. No. 103-395, at 25 (stating that the goal of the bill is to "permit[ ] battered immigrant women to leave their batterers without fearing deportation"). While the spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, Congress found the Act failed to protect all that it intended to protect, including divorced battered immigrants and children who were abused before the age of 21. In a hearing before the Subcommittee on Immigration and Claims, Congresswoman Jackson-Lee discussed those people for whom VAWA was created to protect. The Congresswoman stated:

> The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser . . . I can say that unfortunately, our job, as lawmakers, is not yet done. Our intent in 1994 was to provide battered immigrants with meaningful access to lawful immigration status, thus allowing them to safely leave their abusers. Nevertheless, we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status . . . [D]ivorced battered immigrants do not have access to VAWA immigration relief. There are many "savvy" abusers who know that if they divorce their abused spouse they will cut off their victim's

> access to VAWA relief. H.R 3083 allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce.[1]

Clearly, the petitioner is not the type of battered immigrant woman with whom Congress was concerned with protecting when enacting VAWA or BIWPA as, after the petitioner's divorce from her abusive spouse, she remarried another United States citizen.

It is important to note that the petitioner's current United States citizen spouse filed a Form I-130, Petition for Alien Relative on behalf of the petitioner. The petition was approved by the Seattle district office on September 2, 2002. Common sense dictates that relief under VAWA is limited to those who are vulnerable to spousal or parental abuse. Despite the divorce from her abusive husband, the petitioner still has "meaningful access to lawful immigration status" as she is remarried and the beneficiary of an approved spousal petition.

The remaining issue, as determined by the acting director, is whether the petitioner established that she is a person of good moral character in accordance with 8 C.F.R. § 204.2(c)(1)(i)(F). In her decision, the acting director indicated that the petitioner had only shown evidence that she "requested police clearance record(s) from Korea," not an actual clearance.

On appeal, counsel contends that the petitioner did submit the actual police clearance from Korea prior to the acting director's decision. Counsel submits a copy of such clearance on appeal. We find no need to make a determination as to whether the clearance was actually submitted prior to the denial as the police clearance submitted on appeal shows that there were "no findings" of any violations in Korea. We find such evidence sufficient to establish that the petitioner is a person of good moral character. We, therefore, withdraw the director's finding in this regard.

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.

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[1] *Battered Immigrant Women Protection Act of 2000*, (BIWPA): *Hearing on H.R. 3083 Before the House Subcommittee on Immigration and Claims*, 106th Cong. (2000)(statement of Congresswoman Jackson-Lee).