U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 30 2005
EAC 04 120 53944

IN RE: Petitioner:
Beneficiary: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 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 denied the petition, finding that the petitioner failed to establish she was the spouse of a citizen or lawful permanent resident of the United States.

Sections 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, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

> (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

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 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; [and]

* * *

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

Service records indicate that the petitioner's spouse's permanent resident status was terminated on May 20, 1999, when he was ordered removed from the United States.

The evidence contained in the record indicates that the petitioner married [redacted] on June 13, 1999 in Los Angeles, California, nearly one month after [redacted] lost his status. On March 5, 2004, the petitioner filed the instant self-petition 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. The petition was denied on October 12, 2004, as the director determined the petitioner failed to establish that her spouse was a citizen or lawful permanent resident of the United States.

On appeal, the petitioner submits a brief statement with no additional evidence of her spouse's lawful permanent resident status. In her statement, the petitioner claims the following as her reason for appeal:

> I was married to my husband on June 13, 1999. I did not know that he [is] not a U.S. resident. I have 6 children from my husband. I live with my ex-husband since August [1996] to [October 21, 2002] and married on June 13, [1999]. In all this [sic] years I suffer too much with my husband all this [sic] years. It is not my fault that he lost his residence. I am appeal this residence because I have 6 children and they are under 18 years old all of them. I need to be resident to support my children. I need to be U.S. resident. Attached all my children [sic] birth certificate and my marriage license.

The petitioner's statement does not overcome the director's findings related to her statutory and regulatory ineligibility. As noted previously, the petitioner's spouse's permanent resident status was terminated in May 1999. Accordingly, the petitioner is unable to establish eligibility as she does not have a qualifying relationship with a spouse who is a lawful permanent resident of the United States. The fact that the petitioner was not aware of the fact that her spouse lost his status or that she has six children under the age of 18 is irrelevant. There are no waivers or exemptions from the requirement to show this qualifying relationship.

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.

ORDER: The appeal is dismissed.