

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

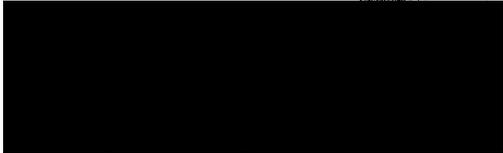
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B9



FILE: [REDACTED]  
EAC 04 100 52416

Office: VERMONT SERVICE CENTER

Date: MAY 18 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

IN 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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 35-year old native and citizen of Venezuela who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen 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;

\* \* \*

(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.

According to the evidence in the record, the petitioner wed her husband, [REDACTED] May 14, 1999 in San Juan, Puerto Rico. The record also indicates that the petitioner and her spouse were divorced on December 21, 2001. The instant petition was filed on February 19, 2004.

The director denied the petition because more than two years had lapsed since the petitioner was the spouse of a citizen of the United States; hence, she was ineligible for this classification.

On appeal, counsel for the petitioner acknowledges that the petitioner was divorced from her citizen spouse at the time the petition was filed. Counsel then states:

In the scheme of an battered and extreme cruelty made on the person of an abused spouse, many times create an afraid which paralyzed her to take action because violent spouse reaction. This condition paralyze action [sic] and late reaction become part of act beyond battered/extreme cruel treated spouse. To this factor add that Court could takes [sic] time in the proceeding of a contentious divorce case.

We are not persuaded by counsel's argument.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. *Johnson v. United States*, 529 U.S. 694, 702 (2000); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Considering the Form I-360 petition under the 2000 amendments to the Act, counsel has not overcome the objection of the director to approve the petition. More than two years have lapsed between the time the Form I-360 petition was filed and the petitioner terminated her marriage to her citizen spouse.

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.