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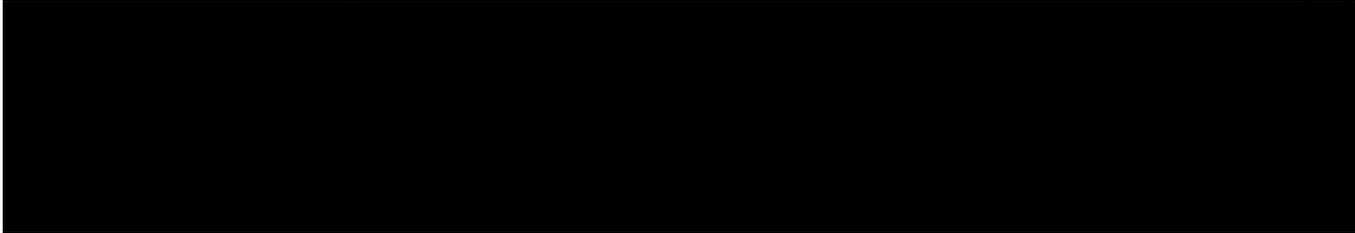
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: SEP 23 2005
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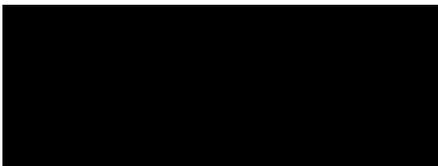
IN RE: Petitioner:

Beneficiary



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)

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.

Mari Johnson

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 (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 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 denied the petition, finding that the petitioner had failed to establish that she is a person of good moral character.

On appeal, counsel for the petitioner submits additional documentation.

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

(1) Eligibility –

(i) Basic eligibility requirements. 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;

* * *

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

The petitioner married her lawful permanent resident spouse, [REDACTED] on July 5, 1984 in Mexico. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on January 10, 1996. The Form I-130 petition was approved on February 9, 1996. On April 16, 2003, the petitioner filed a 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 lawful permanent resident spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, she was requested on April 5, 2004 to submit evidence of her good moral character. The director requested evidence of the final disposition of two drug-related charges. The director informed the petitioner that the following could be submitted:

1. Your own affidavit supported by police clearances* or records from each place you resided for at least 6 months during the 3-year period before filing this petition.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit.

For your convenience a listing of agencies that can assist you in obtaining police clearances from each state in the United States has been enclosed with this notice. Locally issued clearances may still be submitted, and are required from localities that do not offer state issued clearances. Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable.

If your police clearance letter or your own statement indicates that you have been arrested or charged with any crime, please submit the following:

1. copies of the arrest report(s);
2. copies of court documents showing the final disposition of the charge(s); and
3. relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, she was requested on April 5, 2004, to submit evidence, including a police clearance, to establish that she is a person of good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. In response, on May 11, 2004, the petitioner requested an additional sixty days to respond. On July 12, 2004, the director granted the petitioner a 60-day extension of time to respond. The petitioner failed to respond to the request for additional evidence. On January 12, 2005, the director denied the petition, noting that the petitioner had failed to respond to the request for additional evidence and failed to establish that she was a person of good moral character.

On appeal, the petitioner submits her criminal history from the Wisconsin Crime Information Bureau. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the

record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The petitioner failed to submit any evidence establishing her good moral character until the appeal; therefore, she failed to establish that she is a person of good moral character.

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.