



U.S. Citizenship
and Immigration
Services

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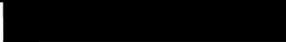
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DEC 13 2006

FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 06 033 50236

IN RE:

Petitioner:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and 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 Guatemala who seeks 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 an alien subjected to battery or extreme cruelty by her United States lawful permanent resident spouse. The director denied the petition because Citizenship and Immigration Services (CIS) records show that the petitioner's husband was deported from the United States and lost his lawful permanent resident status more than two years before her petition was filed. On appeal, counsel for the petitioner argues that the petitioner should be given the priority date of the Form I-130, Petition for Alien Relative, that was previously approved on her behalf, when her spouse was a lawful permanent resident.

Counsel's argument is not persuasive and does not overcome the petitioner's ineligibility for classification as a special immigrant under section 204(a)(1)(B)(ii) of the Act. The appeal will therefore be dismissed.

Section 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 may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as the spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual whose spouse is no longer a U.S. lawful permanent resident is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence;

An alien whose spouse lost lawful permanent resident status is thus only eligible to self-petition for immigrant classification if his or her spouse lost status within the two years directly preceding the filing of the petition and if the spouse's status was lost due to an incident of domestic violence. Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

In this case, the record shows that the petitioner married S-G-¹ on June 29, 1990 in Los Angeles, California. According to Citizenship and Immigration Service (CIS) records, S-G- became a lawful permanent resident of the United States on December 1, 1990. S-G- was ordered deported on September 12, 2000 and consequently lost his lawful permanent resident status on that date. The petitioner filed her Form I-360 on November 7, 2005, more than five years after her husband's loss of status. Because the petitioner's spouse lost his lawful permanent resident status over two years before this petition was filed, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Counsel's reliance on the priority date of the previously

¹ Name withheld to protect individual's identity.

approved Form I-130 is misplaced and is not relevant to whether she meets the statutory requirements of section 204 of the Act. A priority date is established by the filing date of a visa petition. It simply establishes an alien's place on the "waiting list" for an immigrant visa. A priority date does not however, act to preserve specific facts in existence at the time the priority date is assigned. Counsel appears to be under the mistaken belief that if the priority date of the petitioner's Form I-130 is assigned to the Form I-360, the fact that her spouse was not a lawful permanent resident can be overlooked or negated.

We note that while the regulation at 8 C.F.R. § 204.2(h)(2) supports counsel's contention that battered spouses may transfer priority dates from petitions filed by their abusers to their new self-petition, the regulation does not indicate that the transference of a priority date somehow remedies the fact that the petitioner's spouse was not a lawful permanent resident at the time the instant petition was filed. Rather, the significance of the priority date is that if the instant Form I-360 was approved, the petitioner could transfer the priority date from the Form I-130 to the Form I-360, thereby lessening the waiting time for a visa number. While the existence of a priority date is relevant to the issue of adjustment, it does not waive the prima facie eligibility requirements for approval of the Form I-360 petition. The regulation is clear that the spouse's loss of permanent resident status must have occurred within the two-year period prior to the filing of the petition. As the petitioner's spouse lost his status more than two years prior to the filing of the instant Form I-360, the petitioner does not meet the statutory requirements.

The burden of proof in visa petition 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.