U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 20 2006

EAC 05 149 52263

IN RE: Petitioner: [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:

[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.

Robert P. Wiemann, Chief
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 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 had a qualifying relationship as the spouse of a lawful permanent resident of the United States because her spouse lost his lawful permanent resident status more than two years prior to the filing of the petition.

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.

The record contains a Declaration and Registration of Informal Marriage[1] from the state of Texas which indicates that the petitioner and her spouse were married on July 10, 1996.[2] Service records reflect that the petitioner's spouse's permanent resident status was terminated on October 8, 2002 due to an aggravated felony, specifically, his conviction for sexual assault of a child. On April 28, 2005, more than two years after the petitioner's spouse lost his status, 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 director denied the petition on November 16, 2005 finding that the petitioner failed to establish a qualifying relationship as the spouse of a lawful permanent resident of the United States.

On appeal, counsel does not dispute the director's finding that the petitioner's spouse lost his status more than two years prior to the filing of the petition. Instead, counsel argues:

> [The petitioner's spouse] was a Lawful Permanent Resident during the time he was petitioning his wife . . . We feel the abuser's subsequent behavior on his part should not prejudice our client's case. Our client has stated before that she had no contact with the abuser and had only heard that he was in jail through a family member. There was no reason for [the petitioner] to ever know that her husband was no longer a Lawful Permanent Resident.
>
> Furthermore, denying [the petitioner's] case would cause extreme hardship.

Counsel's arguments are not persuasive. The statute clearly indicates that to be eligible for classification, the petitioner's lawful permanent resident spouse, upon whom the petitioner intends to establish a qualifying relationship, must have *lost status within the past 2 years* due to an incident of domestic violence.[3] There are no provisions or exceptions which allow for a petitioner's lack of knowledge regarding her husband's status to overcome the fact that the petition was not filed within two years of the loss of status. Regarding counsel's claim of extreme hardship, is noted that extreme hardship is no longer a consideration in the adjudication of a Form I-360 battered spouse or child petition.[4]

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[1] Texas recognizes the validity of informal marriage including unions that are entered into within its borders as well as those entered into in other states recognizing common law marriages. The law has long been that two people who wish to be married to do not need in have a ceremonial marriage. *See* Section 1.101 of the Texas Family Code.

[2] Although the petitioner had been living with her spouse since 1990, the petitioner's spouse did not get divorced from his first spouse until March 3, 1995.

[3] *See* section 204(a)(1)(B)(II)(aa)(CC)(aaa) of the Act.

[4] Section 1503(b) of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000) amended 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 U.S. citizen or permanent resident is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child.

Although not indicated as a factor in the director's decision, we note that the petitioner has also failed to establish that her spouse's loss of status *was due to an incident of domestic violence.* As noted above, the petitioner's spouse's conviction was not based upon a domestic violence charge, but rather for sexual assault of a child. The conviction has no relation to the petitioner or any of her children.

Accordingly, we agree with the finding of the director that the petitioner has failed to establish that she has a qualifying relationship as the spouse of a permanent resident of the United States because her spouse lost his status more than two years prior to the filing of the petition. In addition, beyond the decision of the director, we find that the petitioner has also failed to establish that her spouse's loss of status was due to an incident of domestic violence.

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.