

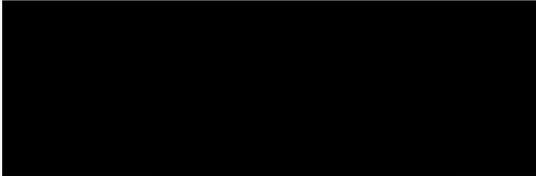


U.S. Citizenship
and Immigration
Services

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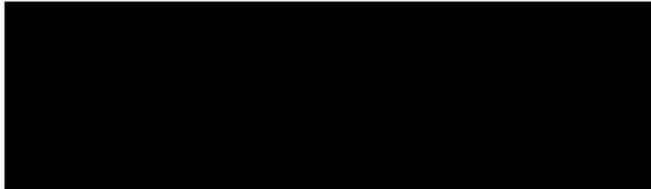


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Office: VERMONT SERVICE CENTER

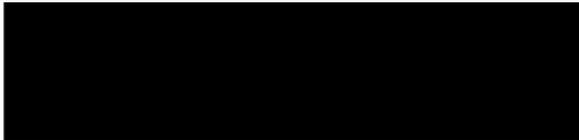
Date: **MAY 12 2006**

IN RE: Petitioner:



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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Mexico 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.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen 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 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;
- (C) Is residing in the United States;
- (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 married United States citizen [REDACTED] in Arizona on March 16, 2001. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on May 14, 2001. A Form I-485, Application to Adjust Status, was concurrently filed on that same date.

The petitioner filed the instant Form I-360 self-petition on May 28, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. The director denied the petition on June 9, 2005, without issuing a Notice of Intent to Deny as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii). The director's denial was based upon a determination that the petitioner had been divorced from her citizen spouse for more than two years at the time of filing and, therefore, could not establish that she had a qualifying relationship as the spouse of a United States citizen. In reaching this determination, the director relied on the date the decree of divorce was signed by the judge, May 23, 2002.

The petitioner, through counsel submits a timely appeal, dated July 12, 2005, and asserts that the director's decision was in error. Specifically, counsel argues that the director's findings regarding the date of the petitioner's divorce from her citizen spouse was incorrect and that rather than relying on the date the divorce was *signed* by the judge, the appropriate date is the date the signed decree of divorce was *filed*. To support his claim, counsel submits copies of relevant excerpts from the Nevada's Rules of Civil Procedure which indicates, in pertinent part:

Rule 58. Entry of Judgment.

*

*

*

(c) *When judgment entered.* The filing with the clerk of a judgment, signed by the judge, or by the clerk, as the case may be, constitutes the entry of such judgment, and no judgment shall be effective for any purpose until the entry of the same, as hereinbefore provided.

Counsel also submits an internet printout from the Family Court in Clark, Nevada which shows the date of the petitioner's divorce as May 28, 2002. We find such evidence properly overcomes the director's finding regarding the petitioner's failure to establish that she had a qualifying relationship as the spouse of a United States citizen within the two years prior to the filing of her petition.

Despite the fact that the director's decision rested on the single issue discussed above, however, we find that there are additional issues that must also be addressed. Because, as noted above, the director failed to issue a NOID prior to issuance of the denial, the case will be remanded to the director for further consideration regarding these additional issues. First, although the petitioner has established on appeal that she was the bona fide spouse of a United States citizen "within the past 2 years," section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act also requires that the self-petitioner demonstrate "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the citizen spouse." In this instance, the record reflects that the petitioner's citizen spouse sought the divorce, not the petitioner. Further, the record contains no evidence to establish a connection between the petitioner's divorce and the claimed abuse. On remand, the petitioner should be afforded an opportunity to establish that such a connection, if one indeed exists.

Second, we find that the record contains both insufficient and conflicting evidence regarding the petitioner's claimed joint residence with his spouse. On the Form I-360, the petitioner claims that she resided with her citizen spouse from March 2001 until February 2002. The petitioner further indicates that she last resided with her citizen spouse at [REDACTED] in February 2002. In her personal statement, the petitioner indicates that after her marriage, she and her citizen spouse resided with her mother "for a short period of time because [her citizen spouse] was remodeling his home." The petitioner submits no documentary evidence to support her claimed joint address at her mother's address. We note that although the record contains a statement from the petitioner's mother, her statement makes no mention of the fact that her daughter and son-in-law resided with her at any time. As it relates to the petitioner's claimed residence at [REDACTED] the petitioner submits a copy of a blank check and a bank statement covering the period from August 21, 2001 to September 14, 2001, the petitioner's 2001 W-2, Wage and Tax Statement, and an employment application. However, the petitioner also submits a copy of a bank statement dated September 15, 2001 to October 17, 2001 which lists the petitioner and her citizen spouse's address at [REDACTED] Las Vegas, Nevada. We can find no explanation for an address at this location in October 2001 given the petitioner's statement that the joint residences she shared with her citizen spouse was her mother's home and at her citizen spouse's home, and her claim on the Form I-360 that her last residence with her spouse was [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On remand, the director should afford the petitioner an opportunity to address this conflicting information and to submit additional evidence to establish her claimed joint residences with her citizen spouse.

Finally, the evidence in the record does not establish that the petitioner entered into the marriage in good faith. Although the petitioner submits a copy of her marriage certificate, such evidence demonstrates only that a *legal* marriage existed; it does not establish that the marriage was entered into in good faith. Similarly, although the petitioner submits photographs of her wedding day, such photographs do not establish the petitioner's intent at the time of her marriage.

In her statement, the petitioner provides no details about her courtship and relationship with her citizen spouse or any indication as to why she married him. Instead, the petitioner indicates that she met her citizen spouse in November 2001, went on a date, "got to know him better" as time passed and "finally decided to get married." The remaining statements, provided by the petitioner's family and friends, provide no further details about the petitioner's intent at the time of her marriage. In the statements, the affiants make general statements such as that they were present at the petitioner's wedding and that the petitioner and her spouse "were happy." However, none of the statements provide any insight as to the petitioner's feelings, emotional state, or intent at the time of her marriage. On remand, the petitioner should be afforded an opportunity to submit additional evidence to establish that she entered into her marriage in good faith.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a

new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.