

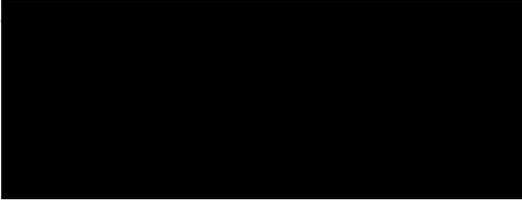
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 22 2005
EAC 03 157 50607

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Acting 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)(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 director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she failed to establish that she is the wife of a United States citizen or lawful permanent resident.

On appeal, former counsel for the petitioner¹ submits a letter urging the director to ascertain the immigration status of the petitioner's spouse.

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;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

¹ Although the petitioner was initially represented by counsel, CIS is in receipt of a letter from the petitioner's former attorney advising CIS that he is currently suspended from the practice of law in Colorado. Accordingly, the Form G-28 submitted with the Form I-360 petition does not establish his eligibility to appear as an attorney as defined in 8 C.F.R. § 1.1(f) and as required in 8 C.F.R. §§ 103.2 and 292.1.

(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 reflects that the petitioner married [REDACTED] on March 2, 2001 in Clark County, Nevada. On April 21, 2003, the petitioner filed a Form I-360 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 U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she was married to a U.S. citizen or lawful permanent resident, the director requested the petitioner to submit additional evidence on April 5, 2004. The director listed evidence the petitioner could submit to establish the citizenship of her husband.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, former counsel for the petitioner asserts that the petitioner provided all the information she could to establish her husband's citizenship and that it is "very easy" for the U.S. government to determine the citizenship status of the petitioner's husband.

This is not persuasive. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefits sought. *Matter of Saucedo*, 18 I&N Dec. 199 (BIA 1982); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

In review, the evidence is insufficient to establish that the petitioner is married to a U.S. citizen. The evidence consists of the following:

- The petitioner's statement.
- A copy of a certified abstract of marriage.
- A police report that lists the petitioner's husband's date of birth.
- A copy of the petitioner's husband's social security card.

The director determined and the AAO concurs that the petitioner failed to establish that she is married to a U.S. citizen or lawful permanent resident. None of the documents submitted indicate where the petitioner's spouse

was born or his citizenship status. The evidence on the record is insufficient to establish that the petitioner's husband is a U.S. citizen or lawful permanent resident.

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.