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**U.S. Citizenship
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FILE:



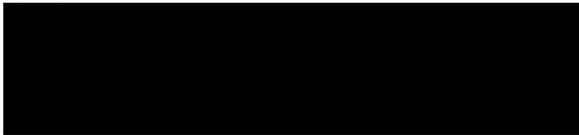
Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

EAC 03 207 53570

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:

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.

Mari Johnson

S Robert P. Wiemann, Director
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 Mexico 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 the petitioner's husband was ordered removed from the United States and lost his lawful permanent resident status more than two years before her petition was filed. On appeal, the petitioner submits an affidavit in which she states that she did not know that her husband's lawful permanent resident status had been terminated and that she only became aware of her right to self-petition under section 204(a)(1)(B)(ii) of the Act shortly before she filed her Form I-360. While we are mindful of these facts, the petitioner is statutorily ineligible for classification as a special immigrant under section 204(a)(1)(B)(ii) of the Act and the appeal must 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 who is no longer married to 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; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

An alien whose spouse has 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 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). *See also* Memorandum from Michael Aytes, Acting Assc. Dir., Domestic Operations, U.S. Citizenship and Immigration Services, *Eligibility to Self-Petition as a Battered Spouse or Child of a U.S. Citizen or Lawful Permanent Resident Within Two Years of the Abuser's Loss of Status*, (Oct. 31, 2005).

In this case, the record shows that the petitioner married [REDACTED] on October 27, 1997. According to U.S. Citizenship and Immigration Services (CIS) records, Mr. [REDACTED] became a lawful permanent resident of the United States on December 1, 1990. Mr. [REDACTED] status was terminated on September 14, 2000 when he was ordered removed from the United States under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony. The petitioner filed her Form I-360 on July

7, 2003, nearly three years after her husband's loss of status. Because the petitioner's spouse lost his lawful permanent resident status over two years before the petitioner's Form I-360 was filed, she is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and her petition must therefore be denied.

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.