

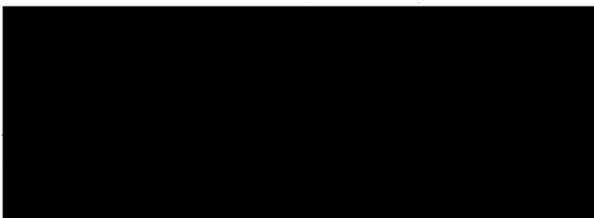
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 19 2006

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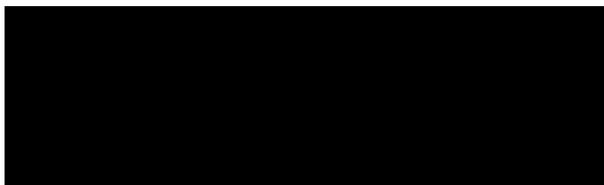
IN RE:

Petitioner:



PETITION: Petition for 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a Notice of Intent to Revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On March 30, 1998, the director approved the petition for classification as an 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 a lawful permanent resident of the United States.

On November 16, 2005, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because a baptismal certificate submitted in connection with the petitioner's Form I-485, application to adjust status, stated that she was married to another man in 1989. The baptismal certificate thus indicated that the petitioner did not have a qualifying relationship with her U.S. lawful permanent resident husband, whom she married in 1986. The petitioner responded to the NOIR with additional evidence. On April 4, 2006, the director revoked the approval of the petition for lack of the requisite qualifying relationship.

The petitioner, through counsel, timely appealed. On appeal, counsel submits a brief and additional evidence.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director's revocation of that approval.

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

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The

determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied . . . by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

The record in this case provides the following pertinent facts. The petitioner is a native and citizen of Mexico. On October 26, 1986, the petitioner married S-C-<sup>1</sup> in Mexico. In her November 12, 1997 declaration, the petitioner states that she arrived in the United States in November 1990. S-C- became a lawful permanent resident of the United States on December 1, 1990. S-C- subsequently filed a Form I-130 petition for alien relative on the petitioner's behalf, which was approved on August 30, 1993. On December 13, 1997, the petitioner filed the instant Form I-360 petition, which was approved on March 30, 1998. On December 9, 1999, the petitioner filed a Form I-485 application to adjust status with the Fresno, California district office. On February 18, 2000, the petitioner and her husband were divorced.

With her Form I-485, the petitioner submitted a birth certificate that was registered on October 26, 1986, which was 15 years after her birth on May 16, 1971. Accordingly, the district director requested secondary evidence of the petitioner's birth. In response, the petitioner submitted a baptismal certificate from the Dioceses of Zamora, Parish of Santiago Angahuan, Michoacan, which confirms that the petitioner was born on May 16, 1971, but states: "Marginal Notes: 'Confirmation in this place on July 25, 1971. Contracted Marriage in this place June 6, 1989 with [REDACTED] [REDACTED]'" This certificate is dated March 6, 1998 and signed by [REDACTED] the parish priest.

Because the baptismal certificate stated that the petitioner was married to M [REDACTED] after she had married S-C-, the district director, through a Form I-72 issued on February 21, 2003, asked the petitioner to submit her original, certified marriage certificates to S-C- and M [REDACTED]

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<sup>1</sup> Name withheld to protect individual's identity.

original certified divorce decrees and “proof of who [the petitioner] was married to and when.” In response, the petitioner submitted:

- A certified baptismal certificate endorsed by [REDACTED] Parish Priest of Santiago Angahuan, Michoacan, which states that on page 335 of the baptismal book number 2 of the parish, the petitioner’s record reads, in the margin: “Certificate Number 1 [REDACTED] Confirmed in this location on the 25<sup>th</sup> day of July Contracted marriage on the 25<sup>th</sup> day of May 1987 with [S-C-].” This certificate is dated March 28, 2003.
- Marriage certificate of the Dioceses of Zamora, Parish of Santiago Apostol, which certifies that the petitioner and S-C- were married in the parish on May 25, 1987. The certificate is dated March 28, 2003 and signed by Pastor [REDACTED]
- Letter dated March 28, 2003 from Pastor [REDACTED] who states that the March 6, 1998 baptismal certificate of the petitioner was “signed by Pbro. [REDACTED], who put information that didn’t correspond to [the petitioner].”

On September 22, 2003, the district director issued another Form I-72 asking the petitioner to submit, *inter alia*: “proof of non-existence [sic] of marriage in Zamora, Michoacan, Mexico and Angahuan, Michoacan, Mexico from the civil registry indicating no marriage was recorded between [the petitioner] and Miguel Amado Rita between the years of 1995 and 2000.” The petitioner did not respond to this request and the district director denied her Form I-485 application on April 21, 2004.

On November 16, 2005, the director of the Vermont Service Center issued the NOIR and requested the petitioner to submit a photocopy of the entire page of the baptism book issued under the seal of the parish where the petitioner’s baptism was recorded, letters from the responsible authorities in Zamora and Anagahuan, Michoacan, Mexico stating that their records do not include a marriage certificate for the petitioner and [REDACTED], an original civil marriage certificate for the petitioner and S-C-, and birth certificates for the petitioner’s three sons issued by the appropriate civil authorities.

On January 17, 2006, the petitioner, through counsel, submitted the following documents:

- Original marriage certificate of the petitioner and S-C- issued by the Civil Registrar of Michoacan, Mexico
- Letter dated October 27, 2004 from the Office of the indigenous community of Angahuan, municipality of Uruapan, Michoacan, which states that the petitioner is married to S-C- in accordance with Mexican law and that to date, no other document indicates the contrary.

- Certification from the United States of Mexico Civil Registry dated October 20, 2004, which states that a search of the archives of the registry of marriages for the years 1995 through 2000 showed no marriage between the petitioner and [REDACTED].
- "Certificate of Inexistence" from the Civil Registry of Zamora, Hidalgo, Michoacan, dated October 27, 2004, which states that a search of the registry of marriages for the years 1995 through 2000 found no marriage between the petitioner and [REDACTED].
- Birth certificates of the petitioner's sons [REDACTED] in the form of certified copies of vital records of California, Fresno and Madera counties.
- Birth certificate of the petitioner's son [REDACTED] issued by the civil registry of Michoacan, Mexico.

In response to the NOIR, counsel also stated that the petitioner had requested a copy of the page from the baptism registration book containing her baptismal record, but that she had not yet received it. Counsel requested an extension of time to submit the document.

In his decision, the director stated that the petitioner did not submit the copy of the page from the baptism registration book and noted, "No explanation was provided for not submitting this document." However, as noted above, counsel did explain why the document was not submitted with the NOIR response and requested additional time to provide it. On appeal, the petitioner submits this document: a facsimile of page 335 from the church's baptism registry, which contains the record of her birth and in the margin states that the petitioner was married to S-C- in 1987. In her appellate letter and brief, counsel again states that this document was not available earlier because the church told the petitioner that the document had been mailed, but the petitioner did not receive it. Counsel further explains that when the petitioner contacted the church secretary to obtain a facsimile, church officials refused to send the document by facsimile and required that an agent personally pick up the document to do so. The facsimile was finally sent to counsel's office on May 16, 2006.

In his decision, the director also determined that the letters from the Civil Registry of Mexico and Zamora were insufficient because they did not indicate a search of the records prior to 1995 and the 1998 summary baptism certificate stated that the petitioner married [REDACTED] in 1989. However, the letters are both dated in October 2004, before the director's NOIR was issued and appear to have been obtained to comply with the September 22, 2003 Form I-72 issued by the district director, which specifically requested a search of the years 1995 to 2000. While the letters are not probative, nor are they disqualifying.

The weight of the evidence shows that the petitioner had a valid marriage with S-C- at the time her Form I-360 self-petition was filed and that the 1998 baptism certificate erroneously stated that she was married to another man. The record contains an original marriage certificate of the petitioner and her former husband issued by the relevant civil authorities in Mexico, a letter from the Office of

Angahuan, Uruapan, Michoacan certifying the validity of the petitioner's marriage in Mexico, a marriage certificate from the petitioner's former church in Mexico, a certified baptismal certificate noting the petitioner's marriage to her former husband and the facsimile of the actual church baptismal registry page recording the petitioner's baptism and noting her marriage. In addition, the petitioner submitted birth certificates issued by the relevant civil authorities in the United States and Mexico for her three children, born in 1987, 1990 and 1993. The petitioner's husband is identified as the father on each of these birth certificates.

The petitioner has established that she had a qualifying relationship with her lawful permanent resident husband, as required by section 204(a)(1)(B)(ii)(II) of the Act. She is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her self-petition was correctly approved.

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 met that burden. Accordingly, the appeal will be sustained.

The record establishes the birth and parentage of the petitioner's children, [REDACTED] and [REDACTED], who are derivative beneficiaries of this petition.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the approval of the petition is reinstated.