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FILE: [REDACTED]
EAC 03 029 54419

Office: VERMONT SERVICE CENTER

Date: **SEP 28 2007**

IN RE: Petitioner: [REDACTED]

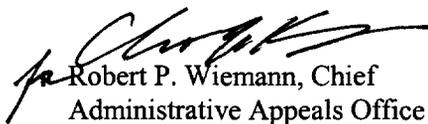
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

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, Chief
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 seeks 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 battered or subjected to extreme cruelty by her United States lawful permanent resident spouse.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a U.S. lawful permanent resident and her eligibility for preference immigrant classification based on such a relationship.

On appeal, the petitioner resubmits copies of documents previously submitted.

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 or the alien's child 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 a 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.

Section 204(a)(1)(J) of the Act further 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section . . . 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

* * *

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident].

The evidentiary standard and 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.

The petitioner in this case is a native and citizen of Mexico. The petitioner married R-A-* in Mexico on February 23, 1988. The petitioner indicates in her personal statement that she last entered the United States in 1988. The petitioner's spouse became a lawful permanent resident on December 1, 1990. On February 4, 2000, the petitioner's spouse was convicted of violating §§ 23152 (Driving Under the Influence of Alcohol or Drugs) and 23550(a) (Fourth or Subsequent Conviction within 10 Years) of the California Vehicle Code, and sentenced to a period of one year and four months in jail.¹ The petitioner's spouse was placed in deportation proceedings and on November 22, 2000, lost his lawful permanent resident status and was deported from the United States. The petitioner's spouse subsequently reentered the United States and was again deported on May 23, 2002.

The petitioner filed this Form I-360 on November 4, 2002. On June 3, 2003 the director issued a Request For Evidence and on May 10, 2006 issued a Notice of Intent to Deny the petition based upon the deficiencies in the record. The director denied the petition on September 15, 2006, finding that as the petitioner failed to establish that her spouse lost his status due to an incident of domestic violence, she was therefore unable to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she was eligible for classification based upon that relationship. The petitioner timely appealed.

* Name withheld to protect individual's identity.

¹ See Superior Court of California, County of Santa Clara, Case No. [REDACTED]

On appeal, the petitioner indicated that she would submit a brief and/or evidence within 30 days of the filing of the appeal. To date, however, the petitioner has submitted nothing further. Upon review, we concur with the findings of the director. Although the record reflects that the petitioner's spouse lost his immigrant status in 2000, less than two years prior to the filing of the petition, the record indicates that her spouse's removal was not due to an incident of domestic violence but rather because of his convictions for driving under the influence of alcohol. The petitioner does not, however, describe any specific incidents of abuse occurring on any of the dates listed in the felony complaint brought against her spouse, to include December 26, 1999, April 25, 1993, June 10, 1994, July 11, 1997, and September 5, 1998. We note that although [REDACTED] provided a statement in support of the petitioner's claim of abuse which indicates that on "a few occasions" the petitioner's spouse would take their son in the car while her spouse was under the influence of alcohol and there were times that the petitioner would be abused by her spouse when she attempted to prevent her spouse from leaving with her son, [REDACTED] does not provide any specific dates. It is further noted that the police report from the petitioner's spouse's December 26, 1999 arrest states that he was the only person in his vehicle. Accordingly, the present record does not establish that the petitioner's former spouse lost his lawful permanent resident status due to an incident of domestic violence, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

As the petitioner did not have a qualifying relationship with a U.S. lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II) of the Act, she also was not eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.