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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

B9



FILE:

EAC 06 245 50439

Office: VERMONT SERVICE CENTER

Date:

MAY 27 2009

IN RE:



PETITION: Petition for Immigrant Abused 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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, and that she is eligible for immigrant classification on the basis of that relationship.

Counsel filed a timely appeal on October 1, 2007.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of 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 an immediate relative under section 201(b)(2)(A)(i) 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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 an immediate relative . . . 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 guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 file 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 petitioner is a native and citizen of Mexico. She married J-D-<sup>1</sup> a lawful permanent resident of the United States, on August 21, 1998 in Mexico. The petitioner filed the instant Form I-360 on August 22, 2006. The director issued a request for additional evidence on March 19, 2007, and requested evidence of the termination of the petitioner's first marriage. The petitioner responded on May 11, 2007, and requested additional time in which to respond. The director issued a notice of intent to deny (NOID) the petition on May 30, 2007. In his NOID, the director notified the petitioner that he was granting her request for additional time. The petitioner responded to the director's NOID on July 30, 2007, and submitted a letter from the Consulate General of Mexico in Chicago. After considering the evidence of record, including the evidence submitted by the petitioner in response to the NOID, the director denied the petition on August 28, 2007.

In her August 16, 2006 affidavit, the petitioner stated that she married her first husband, F-B-<sup>2</sup> in Mexico, when she was "18 or 20 years old." According to the petitioner, she and F-B- lived with her parents, and she and F-B- had two children. The petitioner said that F-B- left her "in 1983 or 1984." The petitioner stated that after she waited for one year, she "went to the ministry office and obtained a divorce." The petitioner reported that the process of obtaining a divorce was very simple: "I said I wanted a divorce, and the clerk makes you divorced."

As noted previously, in both his request for additional evidence and his NOID the director requested evidence of the termination of the petitioner's marriage to F-B-. In response to the director's NOID, the petitioner submitted a July 10, 2007 letter from the Consulate General of Mexico in Chicago, Illinois, which stated the following:

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

<sup>2</sup> Name withheld to protect individual's identity.

By means of this letter, we inform you that with respect to [the petitioner's] case, this Consulate has been in communication with personnel from the Civil Registry of the State of Guerrero who are searching for the necessary information. Thus, we are awaiting an answer and will inform you as soon as it arrives.

In his August 28, 2007 denial, the director found that since she had failed to submit evidence of the termination of her marriage to F-B-, the petitioner had failed to establish (1) that she had a qualifying relationship with J-D-; and (2) that she is eligible for immigration classification under section 203(a)(2)(A) of the Act.

On appeal, counsel submits a second letter from the Consulate General. In its October 25, 2007 letter, the Consulate General stated the following:

With respect to the case of [the petitioner], the Civil Registry of the State of Guerrero advised that even with the new information provided by [the petitioner] . . . it still was not possible to locate a marriage certificate with [F-B-]. For this reason it is not possible to verify the existence of a record of divorce. . . .

In her October 29, 2007 letter in support of the appeal, counsel states that, in Mexico, divorces are recorded as notations to the marriage certificates and that, as noted by the Consulate General, the petitioner's marriage certificate cannot be found. Since her marriage certificate cannot be located, her divorce record cannot be located, either. Counsel asserts that "[t]here remains considerable doubt as to whether a valid marriage was even contracted with [F-B-]."

Upon review of the entire record of proceeding, the AAO finds that, due to the unique fact pattern presented in this case, the petitioner has established that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, and that she is eligible for immigrant classification on the basis that relationship. The AAO finds that, based upon the letter from the Consulate General, there is no evidence that the petitioner's claimed first marriage was in fact a valid marriage for immigration purposes. As such, there is no need for evidence of the legal termination of that claimed marriage. Accordingly, the petitioner has established that she was legally free to marry J-D-. The petitioner has established that she had a qualifying relationship with a lawful permanent resident of the United States and that she is eligible for immigration classification as an immediate relative pursuant to section 203(a)(2)(A) of the Act based upon that relationship.

The petitioner has established that she had a qualifying relationship with a lawful permanent resident of the United States, and that she is eligible for preference immigration classification as an immediate relative on the basis of such a relationship. The AAO concurs with the director's determination that the petitioner meets all other statutory requirements. Accordingly, the petitioner has established that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition will be approved.



EAC 06 245 50439

Page 5

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 is sustained.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained, and the petition is approved.