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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9

FILE:

EAC 09 043 50052

Office: VERMONT SERVICE CENTER

Date:

MAY 17 2010

IN RE:

Petitioner:

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)

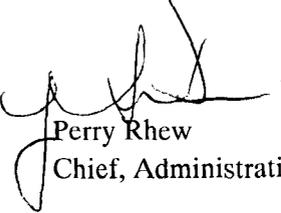
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 AAO will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification under 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 a United States lawful permanent resident.

On October 29, 2009, the director denied the petition. The director determined that the petitioner had failed to establish a qualifying relationship with a lawful permanent resident of the United States. The director noted that section 204(a)(1) of the Act allowed an alien to file a self-petition for up to two years following his or her spouse's loss of status as a citizen or lawful permanent resident, when such status was lost due to an incident of domestic violence. The director determined that as the petitioner's spouse had lost his lawful permanent resident status on October 18, 2005 and the record did not reveal that the status was lost due to an incident of domestic violence, a qualifying relationship as required by statute did not exist.

On appeal, counsel for the petitioner submits a photocopy of a Notice to Appear (NTA) issued to the petitioner's spouse on March 3, 2005. The NTA indicates the status of the petitioner's spouse was adjusted to that of a lawful permanent resident on December 1, 1990 and on August 1, 2001 the petitioner's spouse was found guilty in the District Court in Lee County, North Carolina for the offense of Assault on a Female, committed against the petitioner. The record does not include further evidence on the issue of the petitioner's spouse's loss of status.

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 citizen 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 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 lawful permanent resident of the United States 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

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), states, in pertinent part:

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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. The petitioner married ██████ in North Carolina on March 9, 2001. At the time of their marriage ██████ was a lawful permanent resident of the United States. As referenced above, the petitioner's spouse was placed into removal proceeding before the immigration court on March 3, 2005. According to Service records, the petitioner's spouse was ordered removed *in absentia* by an immigration judge on October 18, 2005. The AAO observes that the director incorrectly stated that the petitioner's spouse did not lose his lawful permanent status due to an incident of domestic violence. The NTA clearly sets forth the petitioner's spouse's conviction of Assault on a Female, the petitioner, as the reason for the NTA. However, the petitioner in this matter did not file the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, which is the subject of this appeal, until November 24, 2008, more than two years subsequent to the date her spouse lost his lawful permanent resident status.

Qualifying Relationship and Immigrant Preference Classification

The AAO does not find that the petitioner has established a qualifying relationship with a lawful permanent resident and eligibility for immigrant preference classification. Although the record reflects that ██████ was, at one time, a lawful permanent resident of the United States, he lost his lawful permanent residence status on October 18, 2005, more than two years prior to the filing of this petition. Accordingly, the present record does not establish that ██████ lost his lawful permanent resident status during the two year period prior to the filing of the I-360 petition as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. Further, as the petitioner did not have a qualifying relationship as the spouse of a lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II) of the Act, she also is 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. There is no exception to the two-year filing period for aliens whose spouses have lost their lawful permanent resident status prior to filing.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

¹ Name withheld to protect individual's identity.