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



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 06 2010

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:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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.

On January 4, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. lawful permanent resident when the petition was filed. Counsel submits a statement on the Form I-290B, Notice of Appeal.

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 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) 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. She entered the United States in or about April 1987. On March 8, 1997, the petitioner married [REDACTED] the abusive United States lawful permanent resident. On October 6, 2003, [REDACTED] lost his status as a lawful permanent resident and was removed from the United States. [REDACTED] loss of status was due to a conviction of domestic violence, stalking, child abuse, child neglect, or child abandonment. On January 7, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

On January 4, 2010, the director denied the petition, determining that the petitioner had not established that she had a qualifying relationship with a U.S. lawful permanent resident when the petition was filed or within two years following the U.S. lawful permanent resident's loss of status due to an incident of domestic violence.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel asserts that the instant Form I-360 should have been granted for humanitarian reasons at the discretion of United States Citizenship and Immigration Services (USCIS) and that failure to do so is reversible error.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

Although the record reflects that [REDACTED] was, at one time, a lawful permanent resident of the United States, he lost his immigrant status on October 6, 2003, more than two years prior to the filing of the petition, when he was ordered removed from the United States. Accordingly, although the petitioner's spouse's loss of status was due to an incident of domestic violence, the record does not establish that he lost his lawful permanent resident status during the two year period prior to the filing of the Form I-360 as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. The AAO is without authority to expand the eligibility criteria for this benefit beyond the limits set by Congress.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her spouse, as required by section 204(a)(1)(B)(ii)(II) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 203(a)(2)(A) of the Act based on his or her relationship to the abusive spouse. Because the petitioner did not establish that she

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

had a qualifying relationship as the spouse of a lawful permanent resident at the time of filing the instant petition, she is also ineligible for immediate relative classification based on her marriage to ■■■■■■■■■■.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, the burden of proof in visa petition proceedings 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. The petition is denied.