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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



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Date: MAY 10 2011

Office: VERMONT SERVICE CENTER

FILE:

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:

SELF-REPRESENTED

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 the \$630 fee. 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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will remain 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 a lawful permanent resident of the United States.

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) 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on November 26, 2007, finding that the petitioner failed to establish that she had the requisite qualifying relationship as the spouse of a lawful permanent resident of the United States, that she was eligible for immigrant classification based upon that relationship, that she was living in the United States, that she shared a joint residence with her lawful permanent resident spouse, and that she is a person of good moral character. In the AAO's April 1, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish that she was the *bona fide* spouse of a lawful permanent resident with the past two years [of filing the petition], that her lawful permanent resident spouse lost his status within the past two years due to an incident of domestic violence, that she had resided with her lawful permanent resident spouse, and that she is a person of good moral character. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on February 19, 2010, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite qualifying relationship and eligibility based upon that relationship, residence in the United States, joint residence with her lawful permanent resident spouse, and good moral character. In response to the NOID, the petitioner submitted additional evidence, including the following: a personal letter dated March 12, 2010, stating, in part, that her husband was deported due to domestic violence, that she and her husband resided together for more than four years and had a baby together, and that she was a person of good moral character; a letter from the Los Angeles County Sheriff's Department Headquarters, stating that a search of the petitioner's name did not find any arrest records, booking records, or active arrest warrants from 2005 to the present; and a birth certificate for her and her husband's baby. The director denied the petition on December 16, 2010, finding that the petitioner failed to establish the requisite qualifying relationship and eligibility based upon that relationship. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. In response to the director's February 19, 2010 NOID, the petitioner submitted the additional documentation listed above, which overcame part of the director's objections, namely, that the petitioner was living in the United States, that she shared a joint residence with her lawful permanent resident spouse, and that she is a person of good moral character. The director denied the petition, however, because the petitioner filed the instant petition more than five years after her husband lost his U.S. lawful permanent resident

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

status on December 20, 2001, and thus she failed to establish the requisite qualifying relationship and eligibility based upon that relationship. While the AAO acknowledges the petitioner's claim in response to the NOID that her spouse was deported due to domestic violence, the petitioner has not demonstrated that she was the spouse of a U.S. lawful permanent resident at the time of the instant petition's February 12, 2007 filing, pursuant to section 204(a)(1)(B)(ii) of the Act, or that her lawful permanent resident spouse lost his status due to an incident of domestic violence within two years of the February 12, 2007 filing, pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. Thus, as stated by the director, the petitioner failed to establish the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

The petition will be denied for the reasons stated above, 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. Accordingly, the December 16, 2010 decision of the director is affirmed and the petition remains denied.

ORDER: The director's decision of December 16, 2010 is affirmed. The petition remains denied.