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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

[redacted]

B9

Date: SEP 29 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: [redacted]

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:

[redacted]

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 $630. 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 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 dismissed. The petition will be denied.

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 finding that the petitioner had not established a qualifying relationship with a lawful permanent resident and her corresponding eligibility for immigrant classification based upon that relationship because her husband lost status for reasons unrelated to domestic violence more than two years before this petition was filed.

On appeal, counsel asserts that the petitioner's husband lost his lawful permanent resident status in 2009 due to an incident of domestic violence. Counsel requested additional time to provide evidence to support this claim. The appeal notice was filed on January 13, 2011, and more than eight months have passed since her request for additional time. As of the date of this decision, counsel has not submitted a brief or any additional evidence. The record will therefore be considered complete for purposes of rendering a decision on the appeal.

Relevant Law and Regulations

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 the alien demonstrates that he or she entered into the marriage with the 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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)(CC)(aaa) 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 "was a bona fide spouse of a lawful permanent resident within the past 2 years and 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, the following:

> 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and 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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a

pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Pertinent Facts and Procedural History

The petitioner in this case is a citizen of Mexico who entered the United States on or around June 1989 without inspection. She married [redacted], whom she thought was a lawful permanent resident, on January 3, 1995 in Yakima County, Washington.[1] The petitioner filed the instant Form I-360 on June 3, 2010. After considering the evidence of record, the director denied the petition on December 13, 2010. On appeal, counsel submits a brief statement.

The issues on appeal are whether the petitioner has demonstrated the existence of a qualifying relationship with her husband and her corresponding eligibility for immigrant classification based upon that relationship at the time this petition was filed. The director made a specific finding in his December 13, 2010 decision that all other grounds of eligibility had been satisfied and we find no error in that determination.

Qualifying Relationship

U.S. Citizenship and Immigration Services (USCIS) records reflect that [redacted] received temporary residence through the Special Agricultural Worker (SAW) legalization program on March 21, 1988. In 1990, he adjusted to permanent resident status pursuant to section 210(a)(2) of the Act, 8 U.S.C. § 1160(a)(2). On September 8, 1993, [redacted] was convicted in the Superior Court of Washington, County of Yakima, of second degree burglary [redacted] He was subsequently released to immigration custody, and placed in deportation proceedings.[2] On September 30, 1993, he was ordered deported. The petitioner's husband was removed from the United States on October 2, 1993.

USCIS records reflect that the petitioner's husband subsequently re-entered the United States without inspection. On March 28, 1994, he was convicted by the Yakima, Washington District Court of fourth degree assault against the petitioner [redacted] On August 13, 1997, [redacted] was convicted in the State Court of Clarke County, Georgia, of two counts of simple battery against the petitioner, disorderly conduct and public drunkenness [redacted] On August 18, 1999, [redacted] was convicted in the State Court of Athens-Clarke County, Georgia of one count of family violence battery and one count of family violence simple battery [redacted] On November 20, 2008, [redacted] was convicted in the State Court of Athens-Clarke

[1] Name withheld to protect the individual's identity.

[2] The record shows that the petitioner's husband was also convicted in the Superior Court of Washington, County of Okanogan on February 21, 1990 of theft in the second degree.

County, Georgia of family violence simple battery, disorderly conduct and willful obstruction of law enforcement officers [redacted]

On November 26, 2008, United States Immigration and Customs Enforcement (ICE) reinstated [redacted] prior deportation order under section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), as an alien who re-entered the United States illegally after having been removed. The petitioner's husband was removed from the United States on December 11, 2008. The record reflects that [redacted] again re-entered the United States without inspection on January 21, 2009. [redacted] was apprehended and on January 23, 2009 his prior order of deportation was reinstated for a second time. On June 19, 2009, he was convicted in the United States District Court for the Southern District of Texas of illegal re-entry in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(1) and sentenced to a term of imprisonment of 27 months (case number 2:09CR00091-001). After [redacted] served his sentence, he was removed from the United States on January 25, 2011.

On appeal, counsel asserts that the petitioner submitted a copy of [redacted] passport, which contains an I-551 stamp dated November 2, 2006, as evidence of his permanent residence. Counsel notes that [redacted] had filed a Form I-90 application to replace his permanent resident card. Counsel states that ICE removed [redacted] from the United States after he served his sentence for his 2008 conviction involving domestic abuse. Counsel contends that the petitioner is eligible for relief because she filed her Form I-360 within two years of [redacted] removal due to an incident of domestic abuse.

Upon a full review of USCIS records, we find that although the petitioner's husband was removed from the United States after his November 2008 conviction for domestic violence, the removal itself was not due to an incident of domestic violence. [redacted] was granted permanent residence in the United States through the SAW legalization program. He lost his lawful permanent resident status on September 30, 1993 after he was convicted of second degree burglary and then ordered deported. This loss of status was prior to his marriage to the petitioner. [redacted] came to the attention of immigration authorities after his November 2008 conviction for domestic violence. However, he was no longer a permanent resident at that time and his subsequent removal in November 2008 was a reinstatement of his prior deportation order under section 241(a)(5) of the Act, which pertains to aliens who re-enter the United States illegally after having been removed. Accordingly, the petitioner has not demonstrated that she was the spouse of a lawful permanent resident and that her husband's loss of lawful permanent resident status was due to an incident of domestic violence pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act.

Conclusion

The petitioner has not established that she had a qualifying relationship with a lawful permanent resident and her corresponding eligibility for immigrant classification based upon that relationship as required by section 204(a)(1)(B)(ii)(II) of the Act.

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[3] USCIS records indicate that the petitioner's husband had numerous aliases, and he was arrested and convicted of several other offenses including driving under the influence of alcohol, probation violations, shoplifting, and giving false name, address, or birth-date to a law enforcement officer.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied. This denial is without prejudice to a filing for any other immigration benefits for which the petitioner may be eligible.

ORDER: The appeal is dismissed.