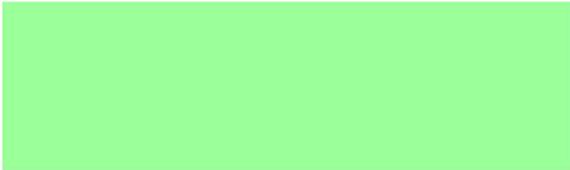




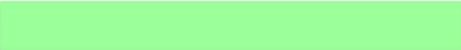
U.S. Citizenship
and Immigration
Services

(b)(6)



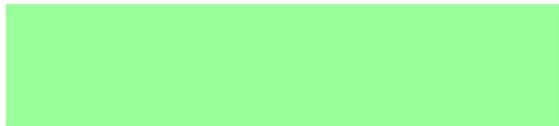
Date: **AUG 18 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self- 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:

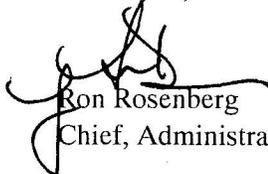


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting Director (“the 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 petitioner seeks immigrant classification 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 spouse.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with her lawful permanent resident spouse and was eligible for immigrant classification based on that relationship because her spouse lost his status as a lawful permanent resident of the United States.

Applicable Law

Section 204(a)(1)(B)(ii)(I) 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).

Under section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, aliens who, within the past two years, were bona fide spouses of lawful permanent residents of the United States remain eligible to self-petition under these provisions if: their spouses lost status within the past 2 years due to an incident of domestic violence; or there was a connection between the termination of the marriages and the lawful permanent resident spouses’ battery or extreme cruelty.

Facts and Procedural History

The petitioner in this case is a citizen of Mexico who claims to have entered the United States without inspection in October 1992. She married D-M-¹, a lawful permanent resident of the United States, in Mexico on December 24, 1983.² The petitioner’s husband was deported from the United States on November 14, 2001 because he was convicted of an aggravated felony on May 14, 2001. The petitioner filed the instant Form I-360 on April 5, 2011. The director denied the petition because the petitioner did not 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 based on that relationship.

¹ Name withheld to protect the individual’s identity.

² At the time of their marriage D-M- was not a lawful permanent resident of the United States. He became a lawful permanent resident of the United States on December 1, 1990.

On appeal, counsel asserts that the petitioner's husband lost his status as a lawful permanent resident due to his domestic violence against his wife.

Analysis

The petitioner's husband lost his status as a lawful permanent resident and was deported from the United States on November 14, 2001, because he was convicted of an aggravated felony on May 14, 2001. Counsel claims that the petitioner's husband lost his status because of an incident of domestic violence. However, Service records show that the petitioner's husband was found to be deportable based upon his conviction for transporting illegal aliens. The petitioner has submitted no evidence that her husband was convicted of a domestic violence crime and was found deportable on that basis.

In addition, even if the petitioner could establish that her husband lost permanent residency due to an incident of domestic violence, the petitioner's wife filed the instant Form I-360 petition on April 5, 2011, more than nine years after her husband's loss of status. Under section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, an abused spouse of lawful permanent resident of the United States remains eligible to self-petition only if, during the past two years, the spouse lost status due to an incident of domestic violence; or there was a connection between the termination of the marriage and the lawful permanent resident spouses' battery or extreme cruelty. In this case, the petitioner does not meet either exception. Consequently, the petitioner did not have a qualifying relationship with her husband at the time of filing, and was ineligible for preference immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.