



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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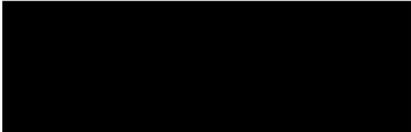


FILE: [REDACTED]
EAC 99 056 53751

Office: Vermont Service Center

Date: AUG 10 2000

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special 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)

IN BEHALF OF PETITIONER:



Public Copy

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INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special 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 the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; (2) is a person of good moral character; (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (4) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel states that the petitioner needs 60 days in which to collect additional documentary evidence to prove her case. He further states that the petitioner is a migrant farm worker and needs to wait until she comes back from the harvest up north in order to start collecting and to produce additional documentary evidence. However, it has been approximately eleven months since the filing of the appeal in this matter, and neither a brief nor additional evidence has been received in the record of proceeding.

8 C.F.R. 204.2(c) (1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a) (1) (A) (iii) or 204(a) (1) (B) (ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b) (2) (A) (i) or 203(a) (2) (A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who

has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States in December 1988. However, her current immigration status or how she entered the United States was not shown. The petitioner married her lawful permanent resident spouse on August 7, 1990 at [REDACTED] Florida. On December 7, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(D), (F), (G) and (H), she was requested on January 7, 1999, and again on March 15, 1999, to submit additional evidence. The director listed examples of evidence she may submit to establish eligibility. The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's requests. The discussion will not be repeated here. While counsel states on appeal that he needs 60 days in which to submit a brief and/or additional evidence, no additional evidence is received into the record of proceeding. On appeal, the petitioner has failed to overcome the director's findings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.