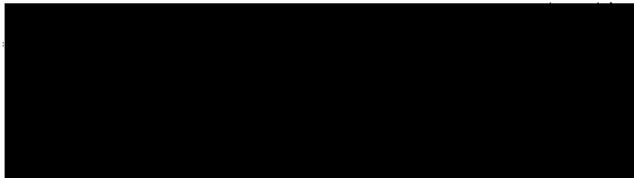




U.S. Department of Justice
Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Vermont Service Center Date: AUG 10 2000
EAC 98 072 50313

IN RE: Petitioner:
Beneficiary:



Public Copy

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: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed in part and withdrawn in part. The petition will remain denied.

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 denied the petition after determining that the petitioner failed to establish that she: (1) 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; and (2) entered into the marriage to the lawful permanent resident in good faith. The director, therefore, denied the petition.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and denied the petition on October 6, 1999.

On motion, the petitioner asserts that the Administrative Appeals Office (AAO) erred in its assessment of evidence of record submitted in support of her self-petition. She submits additional evidence.

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the permanent resident spouse in good faith.

The Associate Commissioner determined that the inconsistencies of the evidence furnished by the petitioner render her claim that she entered into the marriage to the permanent resident spouse in good faith to be less than credible.

On motion, counsel submits a copy of the petitioner's medical records for the period February 4, 1994 through March 13, 1997. The medical record shows that a pregnancy test shows positive on February 22, 1997, and another test on February 25, 1997 shows to be negative. Counsel states that for purposes of evidence of good-faith marriage, the relevant factor to show is that the petitioner became pregnant during her marriage, a fact that is established by her doctor's medical record. The medical record also reflects a change of the petitioner's address to show 2424 N. Kostner. Counsel also submits a copy of a life insurance policy of the petitioner's spouse, signed by her spouse and an insurance agent on

June 29, 1995, naming the petitioner as the beneficiary.

It is concluded that the evidence furnished on motion and the petitioner's and counsel's explanation regarding inconsistencies in the record to establish good-faith marriage appear credible. The petitioner has, therefore, overcome this portion of the findings of the director and the Associate Commissioner pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The Associate Commissioner reviewed the record of proceeding including additional evidence furnished on appeal, and determined that documentation provided did not reflect that the petitioner suffered qualifying abuse during her marriage to the citizen spouse. He concurred with the director's findings that police documents furnished were not police reports and appeared to be for informational purposes only, and while these documents reflect that the offense of battery occurred on April 1, 1997 and July 4, 1997, they did not state the name of the offender, the name of the victim, or the details of the crime committed, and that the petitioner claimed in her self-affidavit that she was not hit by her spouse on April 1, 1997.

While counsel submits supplemental letters from [REDACTED] explaining the discrepancies of the dates when they were first contacted by the petitioner, these letters are insufficient to establish that the petitioner was the subject of extreme cruelty. Further, as previously noted, the orders of protection were obtained by the petitioner based only upon her claims of abuse. Rather than providing new facts in the reopened proceedings pursuant to 8 C.F.R. 103.5(a)(2), the petitioner provides another self-affidavit which appears to again contradict her previously submitted self-affidavits.

The petitioner, on motion, has failed to established that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

Accordingly, the decision of the Associate Commissioner dated October 6, 1999, will be affirmed in that the petitioner has not established that she was battered by, or was the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse. The portion of the Associate Commissioner's decision finding that the petitioner did not enter into her marriage in good faith will be withdrawn. The petition will remain denied.



ORDER:

The decision of the Associate Commissioner dated October 6, 1999, is affirmed in part and withdrawn in part. The petition remains denied.