



U.S. Department of Justice

Immigration and Naturalization Service

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

BA



FILE: [REDACTED]
EAC 99 249 53032

Office: Vermont Service Center

Date: **AUG 21 2001**

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:



EXAMINATION OF APPLICANT
BY VERMONT SERVICE CENTER
ON DECISION OF INSULATION

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

Robert P. Wiemann, Acting 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 the Dominican Republic 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's spouse was deported from the United States in May of 1997; therefore, the petitioner has failed to demonstrate that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A), based on that relationship. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner's spouse was deported after a court proceeding for violation of the controlled substances statutes of New York State prior to his marriage to the petitioner who was unaware of his misconduct. He further asserts that a bona fide marital relation and the petitioner's evidence of abuses are the paramount requirements discussed by the U.S. Congress in 1994, and there is no express language creating a bar to the benefits after departure of the abuser from the United States.

8 C.F.R. 204.2(c)(1), in effect at the time the petition was filed, 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 last entered the United States as a parolee on December 11, 1997. The petitioner married her lawful permanent resident spouse on [REDACTED]. On August 19, 1999, 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 lawful permanent resident spouse during their marriage.

Despite counsel's assertion, 8 C.F.R. 204.2(c)(1)(i)(A) requires that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(iii) requires that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Additionally, 8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

The Service record reflects that the petitioner's spouse, a native and citizen of the Dominican Republic, was removed from the United States in May of 1997 based on his conviction of trafficking in a controlled substance.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien, claiming to qualify for immigration as the battered spouse or child of a resident

alien, may file a petition if the alien demonstrates that he or she is 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.

The record in this case does not reflect that the petitioner's spouse lost status due to an incident of domestic violence. Additionally, the record shows that the petitioner's spouse lost his status as a lawful permanent resident of the United States when he was removed from the United States in May 1997, more than two years prior to the filing of the self-petition on August 19, 1999.

The petitioner, therefore, is ineligible for the benefit sought pursuant to section 204(a)(1)(B)(ii) of the Act, and as provided in 8 C.F.R. 204.2(c)(1)(i)(A) and 8 C.F.R. 204.2(c)(1)(i)(B).

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.