U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Vermont Service Center Date: **JAN 10 2003**
EAC 01 204 53465

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, 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 failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the petitioner states that she was married to a legal resident of the United States who filed a form I-130 relative petition on her behalf which was approved. The petitioner claims that she was not knowledgeable about the fact that she should have applied for the I-360 self-petition while she was married.

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 on December 30, 1987. However, her current immigration status or how she entered the United States was not shown. The petitioner married her permanent resident spouse on March 19, 1993 at Bronx, New York. The petitioner subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on January 17, 1995. On June 11, 2001, 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 permanent resident spouse during their marriage.

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

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

The record of proceeding contains a copy of the Divorce Judgment, effective July 17, 1995, issued by the New York State Supreme Court. The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her permanent resident spouse more than two years prior to the filing of the self-petition on June 11, 2001.

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 self-petitioner claiming to qualify for immigration as the battered spouse or child of a lawful permanent resident is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the permanent resident spouse. Id. section 1503(c), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an

effective date strongly suggests that the amendments entered into force on the date of enactment. Johnson v. United States, 529 U.S. 694, 702 (2000); Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and her permanent resident spouse divorced on January 17, 1995, and the petitioner filed the instant petition on June 11, 2001, more than two years after the divorce was final. Accordingly, the appeal must be dismissed.

The petitioner claims that she was not knowledgeable about the fact that she should have filed the I-360 self-petition while she was married. The Administrative Appeals Office is bound by the clear language of the statute and lacks the authority to change the statute. Further, there is no provision to waive the two-year requirement based on the petitioner's assertion that she lacks knowledge of the immigration laws.

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.

ORDER: The appeal is dismissed.