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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536

FILE: 
EAC 02 208 52931

Office: Vermont Service Center

Date: AUG 28 2003

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

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office 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 eligibility for the benefit sought because she was divorced from her allegedly abusive permanent resident spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the applicant asserts that on November 8, 1999, she filed Form I-751 (Petition to Remove the Conditions of Residence), but that it was returned to her by the Service requesting additional evidence. She claims that the Service failed to provide her with the proper information and application, and that the proof of filing of the I-751, which was erroneously given to her instead of the proper Form I-360, indicates that she was not at fault, and that her intent to comply with Service regulations is obvious.

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 November 1987. However, her current immigration status and how she entered the United States was not shown. The petitioner married her permanent resident spouse on October 8, 1987 in Mexico. A judgment of divorce between the petitioner and [REDACTED] (the petitioner's spouse) became effective on January 21, 1999. On June 3, 2002, 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.

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.

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 two years and battering or extreme cruelty by the permanent resident spouse. *Id.* section 1503(c), 114 Stat. at 1520-21.

The record reflects that the petitioner and Mr. [REDACTED] were divorced on January 21, 1999. Additionally, the record of proceeding contains a copy of a death certificate reflecting that Mr. [REDACTED] died on February 2, 1999.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her permanent resident spouse for more than two years prior to the filing of the self-petition. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing of the Form I-360 self-petition.

The petitioner claims she filed Form I-751 that was erroneously given to her by the Service instead of the proper Form I-360. Therefore, she was not at fault, and that the filing date of the Form I-751 shows proof that she filed within the two-year statutory period.

The record reflects that the petitioner filed Form I-751 on November 8, 1999. On November 11, 1999, the Form I-751 was returned to the petitioner advising her that the Service was unable to verify her immigration status. She was, therefore, requested to provide a copy of one of the following: "your I551 Alien Registration Card (front and back), a copy of your stamped passport page which clearly shows your immigration status with a copy of the page with your biographical information and/or any correspondence from INS indicating that you have adjusted to Conditional Resident status." The Service further advised the petitioner:

If you require additional information, you should contact your LOCAL Immigration and Naturalization Service office for assistance. Personnel at your local servicing office will be able to provide instruction

and/or assistance relating to your immigration processing.

There is no evidence in the record that the petitioner complied with the Service's request for additional evidence. Nor is there evidence that the petitioner complied with the Service's advice that she contact her local Service office for assistance and/or instruction. In fact, the petitioner submitted, as an attachment to the appeal, the original Form I-751 that was returned to her on November 15, 1999.

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 were divorced on January 21, 1999, and the petitioner filed the self-petition on June 3, 2002, more than two years after the divorce was final. The director is correct in his conclusion. Accordingly, the appeal must be dismissed.

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.