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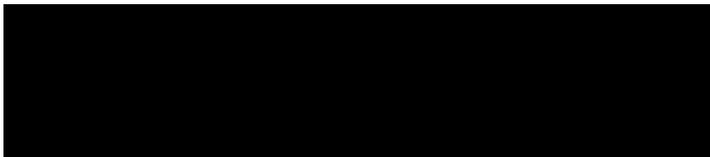
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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**



FILE:



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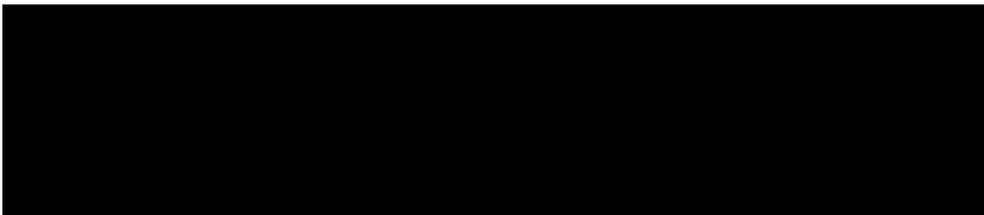
Office: VERMONT SERVICE CENTER

Date: **MAY 11 2004**

IN RE:

Petitioner:

Beneficiary:



PETITION: 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Robert P. Wiemann*  
for 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 Colombia 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 permanent resident of the United States.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The director denied the petition, in part, finding that the petitioner failed to establish that she is a person of good moral character. The director denied the petition, in part, finding that the petitioner failed to establish that she entered into a bona fide marriage in good faith.

On appeal, the petitioner submits a statement and additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that-

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

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;

\* \* \*

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

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record reflects that the petitioner wed [REDACTED] a lawful permanent resident, on April 24, 2001 in Fairfield, Connecticut. [REDACTED] filed a Form I-130 petition on behalf of the petitioner on April 30, 2001. On June 4, 2002, the petitioner filed a Form I-360, 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.

The regulation at 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 qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that she had resided with her spouse, married her spouse in good faith, and that she had been battered or subject to extreme cruelty by her spouse, she was requested on September 6, 2002, to submit additional evidence. The director listed evidence she could submit to establish battery or extreme mental cruelty, joint residence, and a bona fide marriage. In response to the request for additional evidence, the petitioner submitted the following:

1. An affidavit of the petitioner.
2. A letter addressed to the petitioner from a Domestic Violence Crisis Center offering assistance.
3. The petitioner's marriage certificate.
4. A translated form letter indicating that a former neighbor of the petitioner witnessed Amilcar Moraya's physical and psychological abuse.
5. A partially legible complaint against [REDACTED] charging the same with a DWI and an illegible offense on May 29, 2001 in Stamford, Connecticut.
6. An order for protection restraining [REDACTED] vis-à-vis the petitioner dated March 26, 2001 (CR 01-136287).
7. An order for protection restraining [REDACTED] vis-à-vis the petitioner dated November 23, 2001 (CR 01-01390165).
8. A copy of a check made payable to the petitioner from a bonding company in the amount of \$1,200.
9. The petitioner's brother's phone bill indicating that the petitioner's spouse placed calls to speak with her and their son.
10. Copies of letters written to the petitioner by the petitioner's spouse from a correctional facility.
11. Photographs of the petitioner, her child and husband, two of which are dated February 16, 2002.
12. Bills addressed to the petitioner at her husband's former address.
13. A birth certificate of the petitioner's son [REDACTED] born January 4, 2001, listing no father.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner was a person of good moral character and that she entered into a bona fide marriage in good faith, the director denied the petition.

On appeal, the petitioner states that she had been unable to obtain a police clearance from Connecticut because she had moved to Florida. She further states that she "could prove" that she entered in to her marriage in good faith. On appeal, she submitted a police clearance from Stamford, Connecticut. She submitted a police clearance from the Broward County Sheriff's office in Fort Lauderdale, Florida. She

submitted a temporary operator's license issued to her spouse, listing [REDACTED] as his residence as of May 29, 2001. She submitted copies of bills in her own name at the rear unit of the same address as of April 2001 and December 2001. She provided CIS with copies of letters addressed to the petitioner in Florida from her husband at a Connecticut correctional facility. She submitted a certificate issued to her spouse indicating that he completed seven sessions of marriage counseling at the correctional facility.

The police clearance from Stamford Connecticut is inadequate because a search was conducted under only one rendition of the petitioner's name, [REDACTED] whereas she has also been known as [REDACTED] and [REDACTED].

The evidence is insufficient to establish that the petitioner entered into a bona fide marriage in good faith. The record contains scant evidence that the petitioner and her spouse resided together. There is no evidence that the two commingled their assets and liabilities. The petitioner has three children. The petitioner claims that one of her children is the son of her permanent resident spouse, yet the birth certificate does not list him as the father.

Beyond the decision of the director, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her permanent resident spouse. For this additional reason, the appeal will 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.