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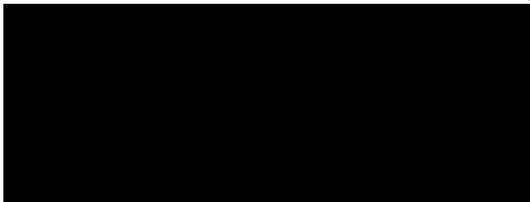
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

BA



FILE:



EAC 03 155 51900

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

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 35-year old 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 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 lawful permanent resident spouse during their marriage.

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 his 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;

* * *

(D) Has resided . . . 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; [and]

* * *

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

According to the evidence on the record, the petitioner wed her husband, Rodolfo Garcia Pozo on June 18, 1991. The record also indicates that Rodolfo Garcia Pozo and Patricia Zepeda Garza were divorced on January 25, 1999. The petitioner filed the instant petition on January 25, 2003.

The director denied the petition because more than two years had lapsed since the petitioner was the spouse of a lawful permanent resident of the United States; hence, she was ineligible for this classification.

On appeal, the petitioner asserts that she previously filed two additional Form I-360 petitions and that Citizenship and Immigration Services (CIS) should honor the filing date of her initial petition since it was then approvable.

The evidence on the record indicates that the petitioner initially filed a Form I-360 petition (EAC9913752378) on March 15, 1999, less than two months after her divorce from her lawful permanent resident spouse was final. The director denied the petition, finding that the petitioner was ineligible because she was not married to a United States citizen or lawful permanent resident as of the date of the filing of the Form I-360 petition. The evidence on the record shows that the petitioner sought to file a second Form I-360 petition (EAC0120452320) on June 14, 2001, but that the case was rejected as improperly filed on September 5, 2001 because the petitioner's check for the filing fee had been returned for insufficient funds and the petitioner failed to remit the filing fee within 30 days of notice.

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(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen 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 the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 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). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968). Considering the Form I-360 petition under the 2000 amendments to the Act, the petitioner has not overcome the objection of the director to approve the petition. More than two years have lapsed between the time the Form I-360 petition was filed and the petitioner's termination of her marriage to a lawful permanent resident of the United States. The petitioner has not overcome the director's objection to approving the Form I-360 petition.

The petitioner's assertion that CIS should honor the prior filing date has been considered. It is noted that the law in effect at the time the first and second Form I-360 petitions were submitted and adjudicated by CIS, required the petitioner to be the spouse of a United States citizen or lawful permanent resident at the time of filing the petition. CIS cannot retroactively apply the law, as amended, to previously decided petitions.

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.