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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[redacted]

FILE: [redacted] EAC 01 056 52569 Office: Vermont Service Center Date: MAY 01 2002

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E Crawford 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 Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to submit evidence as had been requested to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse pursuant to 8 C.F.R. 204.2(c)(1)(i)(D); and (2) entered into the marriage to the citizen or lawful permanent resident in good faith pursuant to 8 C.F.R. 204.2(c)(1)(i)(H). The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner was married and lived with the U.S. citizen spouse for three years. He further asserts that the findings of fact and conclusions of law confirm a good-faith marriage since the record is clear from the trail that no allegations to the contrary were made. Counsel resubmits copies of court documents relating to the petitioner's divorce and claim of extreme cruelty. The director, however, did not find extreme cruelty pursuant to 8 C.F.R. 204.2(c)(1)(i)(E) to be lacking and will not be addressed in this proceeding.

Because the petitioner submitted no evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(D) and 8 C.F.R. 204.2(c)(1)(i)(H), she was requested on February 6, 2001, and again in a notice of intent to deny dated September 19, 2001, to submit additional evidence. The director listed examples of evidence she may submit to establish eligibility. Because the petitioner failed to respond to the director's requests, the petition was denied on December 4, 2001.

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5.

There is no appeal of the director's decision in the present case. The appeal will, therefore, be rejected. If the applicant has

additional evidence for the record, such documentation should be forwarded on a motion to reopen to the office having jurisdiction over the present application (the office which rendered the initial decision).

ORDER: The appeal is rejected.