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U.S. Department of of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: APR 22 2003
EAC 02 057 50264

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 that originally decided your case. Any further inquiry must be made to that office.

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 (AAO) on appeal. The appeal will be rejected, and the case will be remanded for further action consistent with this decision.

The petitioner is a native and citizen of Brazil 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) is a person of good moral character, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F); 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 neither he nor the petitioner received the Service's Notice of Action requesting additional evidence. However, since the Service sent a copy of the notice with the denial letter, he and the petitioner are in the process of obtaining the evidentiary materials requested. Counsel, therefore, requests that the denial be reversed or, in the alternative, that this appeal be treated as a motion to reopen the case to allow them time to comply with the request for information.

The record reflects that the petitioner was requested on March 21, 2002, to submit additional evidence to establish that she met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(F) and (H). The director listed examples of evidence she may submit to establish eligibility. Because the petitioner failed to respond to the director's request, the petition was denied on July 15, 2002.

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.

The petitioner appealed the director's denial. There is no appeal of the director's decision in the present case as it was based upon the petitioner's abandonment of the petition. Therefore, the AAO does not have jurisdiction to consider the appeal that was filed as a result of the director's denial of the petition.

Counsel requests that, in the alternative, the appeal be treated as a motion to reopen the case to allow them time to comply with the request for information. 8 C.F.R. § 103.5(a)(1)(ii), however, states that the official having jurisdiction is the official who

made the latest decision in the proceeding. The motion to reopen is not within the jurisdiction of the AAO.

The appeal, therefore, will be rejected, and the case will be remanded to the director so that he may treat the appeal as a motion to reopen.

ORDER: The appeal is rejected. The case is remanded for appropriate action consistent with the above discussion.