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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] Office: Vermont Service Center Date: JAN 24 2003
EAC 02 025 50041

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: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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, and the case will be remanded for further action.

The petitioner is a native and citizen of the Dominican Republic 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); (2) 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, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E); (3) is a person of good moral character, pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); and (4) 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, the petitioner states that she had submitted information concerning the abuse, as well as evidence regarding her marital relationship and the citizenship of her husband. The petitioner submits additional evidence.

The petitioner was requested on February 1, 2002, to submit additional evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(D), (E), (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.

An appeal was subsequently filed by the petitioner. However, there is no appeal of the director's decision in the present case. The

appeal will, therefore, be rejected. The petitioner, however, has submitted additional documents for the record. Therefore, the case will be remanded to the director so that he may reopen the matter on a Service motion, and adjudicate the petition supported by the additional documentation. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.

ORDER: The appeal is rejected. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.