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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: MAY 13 2003
EAC 01 059 50941

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

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 case will be remanded to the director for further action.

The petitioner is a native and citizen of Venezuela 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 he 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). The director further noted that the applicant had failed to indicate whether he and his spouse have any prior marriages although he was granted an opportunity to submit this evidence.

On appeal, counsel asserts that the Service erred in holding that the petitioner did not demonstrate that he was battered within the meaning of the law. He states that the Service officer did not give enough weight to the evidence that the petitioner provided. More specifically, the officer did not even consider the affidavit that he submitted. Counsel further states that the petitioner did provide copies of Form G-325 indicating that neither he nor his wife had any prior marriages. Counsel submits additional evidence.

The record reflects that the petitioner was requested, in a notice of intent to deny dated May 15, 2001, to submit evidence to establish that he has been the subject of extreme cruelty. The director noted that the petitioner failed to indicate on his petition whether he or his spouse had any prior marriages. Therefore, he was also requested to submit proof of the legal termination of the marriage(s), if they had been previously married. Because the record did not include a response to this notice, the director denied the petition on November 21, 2001.

The record of proceeding, however, contains the petitioner's response to the director's intent to deny which appears to have been received by the Service prior to the denial of the petition, and was not addressed by the director in his decision.

The case will, therefore, be remanded so that the director may review the documentation furnished by the petitioner and reevaluate

his decision. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.