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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

B9

APR 07 2004

FILE: [redacted] Office: Vermont Service Center Date:
EAC 01 136 52747

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). A brief was submitted by counsel subsequent to the appeal but was not included in the record of proceeding prior to the decision of the AAO. The case will, therefore, be reopened. The previous decision of the AAO will be withdrawn, the appeal will be rejected, and the case will be remanded to the director for further action.

The petitioner is a native and citizen of Moldova 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 denied the petition after determining that the petitioner failed to submit evidence, as had been requested, to establish that he: (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).

Upon review of the record of proceeding, the AAO noted that although counsel, on appeal, indicated that he was sending a brief and/or evidence within 30 days, it had been approximately 8 months since the filing of the appeal and no additional statement or evidence was provided. The AAO, therefore, summarily dismissed the appeal on July 25, 2002.

A brief, furnished by counsel subsequent to the appeal, was received by the Service but was not included in the record of proceeding prior to the decision of the AAO. Therefore, the case will be reopened on a Service motion.

Because the petitioner submitted no evidence to establish that he has met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(D) and (H), he was requested on April 17, 2001, and again on July 2, 2001, to submit additional evidence to support his claims. The director listed examples of evidence he may submit to establish eligibility. The director noted that the petitioner failed to submit any evidence to establish eligibility. The director, therefore, denied the petition on September 28, 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.

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 applicant, 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 to adjudicate the petition supported by the documentation. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the Administrative Appeals Office 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.