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U.S. Department of Justice

Immigration and Naturalization Service

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FILE: 
EAC 00 131 53145

Office: Vermont Service Center

Date: DEC 08 2002

IN RE: Petitioner:
Beneficiary:



PUBLIC COPY

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:



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


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 China 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) is a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); and (3) 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's application for adjustment of status (Form I-485) is still pending before the Service. He submits the petitioner's divorce decree and states that he will be submitting a brief and additional documents within 30 days. However, it has been approximately 8 months since the filing of the appeal and neither a brief nor additional evidence has been received.

The record reflects that the petitioner was requested on April 21, 2000, and again in a notice of intent to deny dated December 7, 2000, to submit evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(D), (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 requests, the petition was denied on April 3, 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.