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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D. C. 20536



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FILE: [Redacted]
EAC 00 094 50325

Office: Vermont Service Center

Date: DEC 08 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

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
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 Japan 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 the spouse of a citizen or lawful permanent resident of the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(A); (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship pursuant to 8 C.F.R. 204.2(c)(1)(i)(B); (3) is residing in the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(C); (4) 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); (5) 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); (6) is a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); (7) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child, pursuant to 8 C.F.R. 204.2(c)(1)(i)(G); and (8) 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 applicant, through former counsel, submits additional evidence.

Because the petitioner submitted insufficient evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(A), (B), (C), (D), (E), (F), (G) and (H), she was requested on February 16, 2000 to submit additional evidence. The director listed examples of evidence she may submit to establish eligibility. In response, the petitioner requested additional time in which to comply with the request. No additional evidence, however, was furnished. The director, therefore, denied the petition on October 31, 2000.

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 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.