

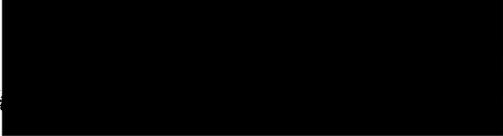


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U.S. Department of Justice

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 00 119 53589

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)

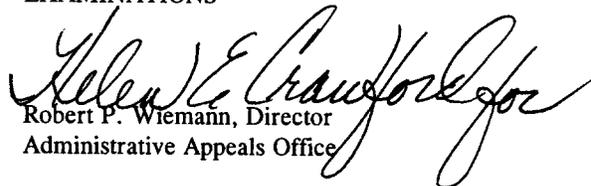
IN BEHALF OF PETITIONER: Self-represented

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, 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 additional evidence as had been requested to establish that she: (1) 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); and (2) 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). The director, therefore, denied the petition.

On appeal, the petitioner asserts that when she received the director's decision, she was under continuous evaluation by her therapist, and that the reports from her therapist are evidence of the abuse. She submits additional evidence.

The applicant was requested on March 22, 2000, and again in a notice of intent to deny dated November 22, 2000, to submit additional evidence to establish that she has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(E) and (G). The director listed examples of evidence she may submit to establish eligibility. Because no evidence was submitted, the director denied the petition on March 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 evidence 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 application 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.