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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



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FILE: [Redacted]
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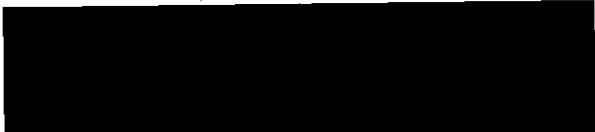
Office: Vermont Service Center

Date: DEC 19 2001

IN RE: Petitioner: [Redacted]
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)

IN BEHALF OF PETITIONER:



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.

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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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 summarily dismissed.

The petitioner is a native and citizen of Nigeria 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 establish that he: (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); and (3) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). The director, therefore, denied the petition.

On appeal, counsel states: "Some of the reasons given for the denial can be overcome with additional evidence, others are mistake of fact or law which will be detailed in a forthcoming legal brief." While counsel indicates that a brief and/or additional evidence will be sent within 30 days, it has been approximately eleven months since the filing of the appeal in this matter, and neither a brief nor additional evidence has been received in the record of proceeding.

8 C.F.R. 103.3(a)(1)(v) states, in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Despite counsel's assertion on appeal, the record reflects that the director reviewed the evidence of record and concluded that:

(1) the Decree Nisi of Dissolution of Marriage is not a final action terminating the petitioner's prior marriage according to Nigerian law; therefore, the petitioner had not established that he was free to marry his abusive spouse (Ms. [REDACTED]);

(2) the document terminating his marriage to Ms. [REDACTED] which indicates that the divorce was final on December 21, 1998 was altered to reflect the date of December 21, 1999, and the

alterations were not initialed by the court; therefore, if the petitioner was divorced in 1998, he was not married to a U.S. citizen when the I-360 was filed on June 7, 1999;

(3) the petitioner remarried on February 16, 2000 to Ms. [REDACTED], during the pendency of the I-360 petition based on his claim that he was abused by his now former wife, Ms. [REDACTED]; therefore, this current marriage nullifies his rights under the provisions of 8 C.F.R. 204.2(c)(1)(ii), and the petition cannot be approved based on the petitioner's remarriage.

Counsel, on appeal, failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Nor did the petitioner submit a brief and/or evidence within 30 days as indicated on appeal. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.