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U.S. Department of Justice  
Immigration and Naturalization Service

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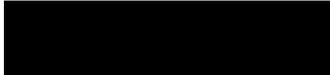
AUG 22 2002

FILE: [Redacted]  
EAC 00 090 53603

Office: Vermont Service Center

Date:

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.

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, 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 dismissed.

The petitioner is a native and citizen of Ecuador 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) has resided in the United States with the citizen or lawful permanent resident spouse; (2) 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; (3) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child; and (4) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that he had been abused during the marital relation by his spouse who commenced living with him while he was residing at his [REDACTED] apartment. He further asserts that his wife indeed obtained a new identification card the day before the civil ceremony showing the address of her home at Whyte Place and he believes, then and now, that his spouse did not want to leave her place. The petitioner states that he was in anguish since the marriage because of her changes of heart, she manipulates him and he suffers of insecurity due to her personality. He further states that he and his wife entered into a loving relationship before the marriage, and that immigration nightmares had followed him since her abandonment.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) 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;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner entered the United States without inspection on April 13, 1994. The petitioner married his United States citizen spouse on January 30, 1997 at New York, New York. On February 11, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that he has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(D), (E), (G), and (H), he was requested on February 24, 2000 to submit additional evidence. The director reviewed and discussed the evidence furnished by the petitioner. That discussion will not be repeated here.

The petitioner claims on appeal that he has resided with his spouse, that he has been mentally and physically abused by his spouse, and that he and his spouse entered into a loving relationship. However, no additional evidence was furnished by the petitioner to establish his claims and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(D), (E), (G), and (H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.