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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

FILE: [Redacted]
EAC 01 193 50874

Office: Vermont Service Center

Date: **DEC 13 2002**

IN RE: Petitioner:
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:

[Redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 Jamaica 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 furnished insufficient evidence to establish that he entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service erred in finding that there was insufficient evidence to find that the marriage was bona fide. He states that the "Service found that Mr. [REDACTED] [the petitioner] suffered extreme hardship at the hands of his wife. Implicit in this finding is the determination that the relationship is bona fide. Mr. [REDACTED] would not have suffered the extreme hardship that the Service has concluded existed but for there having been an intimate bona fide relationship between him and his wife." Counsel further asserts that the previously submitted affidavit of [REDACTED] the mother of the U.S. citizen spouse, clearly supports a finding that the marriage was bona fide.

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

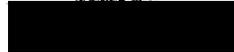
(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States in December 1999. However, his current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on August 22, 2000 at Hartford, Connecticut. On May 10, 2001, 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.

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

Because the petitioner furnished no evidence to establish the existence of a good-faith marriage, he was requested on June 26, 2001, and again on September 19, 2001, to submit additional evidence. The director listed examples of the evidence he may submit to show good-faith marriage. The director reviewed the evidence furnished by the petitioner and determined that the affidavits furnished were insufficient to establish that he married his spouse in good faith.

Counsel asserts that the previously submitted affidavit of [REDACTED] the mother of the U.S. citizen spouse, clearly supports a finding that the marriage was bona fide. Counsel claims that this affidavit is sufficient to establish a bona fide marriage because Ms. [REDACTED] states, "I have no doubt that the relationship between [REDACTED] and [REDACTED] is legitimate." This one sentence and one document, without any supporting documentary evidence, is insufficient to establish the existence of a good-faith marriage. Furthermore, the fact that the petitioner was abused by his wife is not evidence of a bona-fide marriage as claimed by counsel.



While the record establishes that the petitioner and his spouse have resided together pursuant to 8 C.F.R. 204.2(c)(1)(i)(D), the petitioner has failed to establish that he entered into the marriage to the U.S. citizen in good faith, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(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.