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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



FILE [REDACTED]  
EAC 99 179 51591

Office: Vermont Service Center

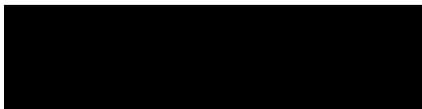
Date: 7 JAN 2002

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:



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

*Helen E. Crawford for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be 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 denied the petition after determining that the petitioner failed 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); (2) is a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); (3) 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 (4) 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).

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and denied the petition on March 31, 2000.

On motion, counsel submits a medical report/psychiatric evaluation dated April 26, 2000, and requests that the director's decision be revoked and the petition be granted.

Pursuant to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

As evidence that the petitioner was the subject of extreme cruelty, counsel, on motion, submits a psychiatric evaluation from Faouzia Barouche, M.D., dated April 26, 2000, stating that he has been treating the petitioner since April 18, 2000, that she is suffering a major depression with psychotic symptoms which she relates to the emotional and psychological abuse inflicted by her husband, and that she "now perceives him as a threat to her life and although he never attacked her physically, he created an environment that made her function in a very erratic, unreliable and unpredictable

manner." He further states that the couple's conflicting relationship has had an impact on the petitioner's psychological, emotional, and physical well being.

Dr. [REDACTED] did not indicate what criteria was utilized in determining that the alleged abuse by the spouse was the source of the petitioner's medical condition and the extent of the abuse perpetrated on the petitioner. The evaluation was based on the petitioner's own testimony and it was found to be insufficient due to the fact that there is, in essence, no corroborating evidence to establish the claim of extreme cruelty.

Further, this single evidence, furnished on motion, does not establish that the petitioner is a person of good moral character, is a person whose removal would result in extreme hardship, and that she entered into the marriage to the citizen in good faith. For these reasons, the motion may not be granted.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The motion is dismissed.