



B9

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



Office: Vermont Service Center

Date: 02 JUL 2002

EAC 00 042 51668

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.

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 rejected.

The petitioner is a native and citizen of Kenya 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 evidence as had been requested to establish that he: (1) is a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); (2) 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); and (3) 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). The director, therefore, denied the petition.

On appeal, counsel asserts that the Service erred in holding that the petitioner lacked good moral character; that the petitioner's deportation would result in hardship; that the petitioner did not enter the marriage in good faith; and that the Service erred in not finding that the petitioner had suffered abuse from his citizen spouse. Counsel indicates that he is sending a brief and/or evidence within 30 days; however, it has been approximately 13 months since the appeal was filed in this matter and no additional evidence has been entered into the record of proceeding.

Because the petitioner submitted no evidence to establish that he has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(F), (G) and (H), he was requested on December 10, 1999, and again in a notice of intent to deny dated September 20, 2000, to submit additional evidence. The director listed examples of evidence he may submit to establish eligibility. Based on counsel's request for an extension of time in which to submit additional evidence, on November 25, 2000, the petitioner was granted an additional 60 days in which to submit additional evidence. Because the record did not include a response to overcome the grounds of denial, the director denied the petition on March 23, 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. If the applicant has additional evidence for the record, such documentation should be forwarded on a motion to reopen to the office having jurisdiction over the present application (the office which rendered the initial decision).

ORDER: The appeal is rejected.