



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



FILE: 
EAC 01 047 55038

Office: Vermont Service Center

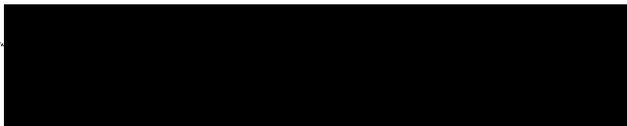
Date: JUL 08 2002

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:

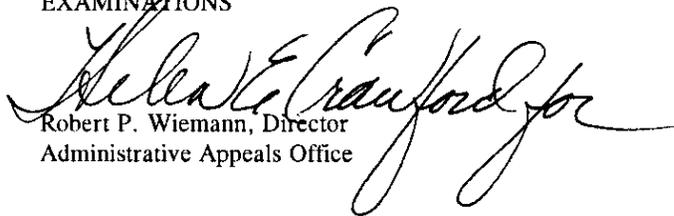


Public Copy

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.

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 rejected.

The petitioner is a native and citizen of the Dominican Republic 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 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); 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 did not give enough weight to the evidence presented which clearly demonstrated that the petitioner had established a prima facie case. Counsel states that the petitioner will be filing additional evidence within 30 days. However, it has been approximately 5 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.

Because the record of proceeding contains no evidence to establish that the petitioner has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(E), (F), and (H), she was requested on January 25, 2001, and again in a notice of intent to deny dated December 14, 2001, to submit additional evidence. The director listed examples of evidence she may submit to establish eligibility. Because the record did not include a response to the Service's notice, the petition was denied on December 14, 2001. Despite counsel's assertion on appeal, the record reflects that the director reviewed the evidence of record and determined that the petitioner failed to submit any evidence to establish eligibility.

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.



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.