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U.S. Department of Justice
Immigration and Naturalization Service

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JUL 11 2002
OFFICE OF ADMINISTRATIVE APPEALS

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

[Redacted]

FILE: [Redacted]
EAC 99 245 52488

Office: Vermont Service Center

Date: JUL 11 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]

Hand 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Associate Commissioner for Examinations; a subsequent motion to reopen was granted and the Associate Commissioner affirmed his previous decision. The matter is again before the Associate Commissioner on another motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is a native and citizen of Guinea, West Africa, 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 originally denied the petition after determining that the petitioner had failed to establish that he: (1) is the spouse of a citizen or lawful permanent resident of the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(A); and (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). The director, therefore, denied the petition.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and dismissed the appeal on June 21, 2000. Based on a motion to reopen, the Associate Commissioner determined that the petitioner was no longer required to show that his removal from the United States would impose extreme hardship to himself or to his child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). He noted, however, that although counsel states on motion that he was enclosing evidence of termination of the marriages of the petitioner's spouse, the documents were not included with the motion. The Associate Commissioner, therefore, affirmed his previous decision on October 22, 2001.

Another motion to reopen, filed on December 5, 2001,¹ is again before the Associate Commissioner. Counsel states that because the petitioner was not a party to any of his spouse's prior marriages, he could not obtain certified copies of the actual divorce judgments from the court; however, he is submitting a photocopy of the court's minutes page for the 1991 divorce and a computer print-out for the 1994 divorce.

¹ Counsel states that although the Associate Commissioner's decision was dated October 22, 2001, it was not mailed until November 13, 2001 as the postmark on the copy of the attached envelope clearly shows; therefore, the motion was timely filed.

Counsel submits: (1) a copy of the Clerk's Minutes of Supreme Court Actions and Proceedings, New York County, Index No. [REDACTED] reflecting that the judgment of divorce between the petitioner's wife and her former husband was entered on September 6, 1991; and (2) a copy of a computer print out of the Supreme Court, State of New York, Office of the County Clerk, reflecting that the judgment of divorce between the petitioner's wife and another former husband was entered on April 25, 1994.

It is, therefore, concluded that the petitioner has overcome this basis for denial on motion pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

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 met that burden. As the director did not raise any other basis for denial, the previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

ORDER: The decision of the Associate Commissioner dated October 22, 2001 is withdrawn. The petition is approved.