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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]

Office: Baltimore

Date: 25 JUL 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

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was revoked by the District Director, Baltimore, Maryland. 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 granted, and the case will be remanded to the district director for further action.

The petitioner is a native and citizen of Eritrea (Ethiopia) 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 Vermont Service Center approved the visa petition on March 31, 1998. On December 21, 2000, the Baltimore district director revoked the approval of the self-petition after determining that the submitted documentation failed to establish that the petitioner: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage pursuant to 8 C.F.R. 204.2(c)(1)(i)(E); (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 in good faith pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The Associate Commissioner noted that on July 10, 2000, the petitioner was accorded 30 days in which to submit additional evidence and to rebut the reasons for the district director's intent to revoke the petition. Because the petitioner failed to submit any other documentation to overcome the derogatory information contained in the district director's notice of intent to revoke, on December 21, 2000, the district director revoked the petition. The petitioner, on appeal, asserted that he disagrees with the decision of the district director to revoke his I-360 petition, and that the decision is contrary to the evidence in the record. However, no additional evidence was furnished to corroborate his assertion and to overcome the district director's findings. The Associate Commissioner, therefore, dismissed the appeal on August 21, 2001.

On motion, counsel asserts that the district director does not have jurisdiction to revoke a petition approved by the Regional Director. Counsel cites 8 C.F.R. 205.2(a) which states:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in section 205.1 when the necessity for the revocation comes to the attention of this Service.

Counsel states that the district director is not authorized to approve Form I-360 petitions, and that Service regulations and guidelines provide for the filing and adjudication of I-360 petitions with the Regional Service Center, not with the district director. Counsel further states that the filing instructions for I-360 petitions direct applicants from the State of Maryland to file the I-360 petition with the Vermont Service Center; accordingly, only the Service Center is authorized under 8 C.F.R. 205.2(a) to revoke a petition that he/she has approved.

In this case, the Vermont Service Center approved the self-petition on March 31, 1998. The Baltimore district director revoked the approval of the self-petition on December 21, 2000. 8 C.F.R. 103.1(g)(2)(ii)(B) states, in part:

District directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers...or exclusively delegated to service center directors....

In a notice dated April 7, 1997 (62 FR 16607), the Commissioner announces the Service's plan to expand the Direct Mail Program, and the Service will now require that all Forms I-360, filed by a self-petitioning battered spouse, child, or by the parent of a battered child, be mailed directly to the Vermont Service Center. According to 62 FR 16607, effective May 7, 1997, Forms I-360 for self-petitioning battered spouses and children residing within the United States must be mailed, with all supporting documentation, directly to the Vermont Service Center, and that appeals and motions filed during the transition period, and after the notice goes into effect, should be filed with the Vermont Service Center and will be processed by that office.

Based on 8 C.F.R. 205.2(a) and 62 FR 16607, the decisions of the district director and the Associate Commissioner will be withdrawn, and the case will be remanded so that the district director may return the petition to the Vermont Service Center for review and possible revocation.

ORDER: The decision of the Associate Commissioner dated August 21, 2001, is withdrawn. The case is remanded for appropriate action consistent with the above discussion.