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U.S. Department of Justice
Immigration and Naturalization Service

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prevent clearly unwarranted
admission of persons

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



FILE: [Redacted]
EAC 00 285 51320

Office: Vermont Service Center

Date:

09 MAY 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, 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 dismissed.

The petitioner is a native and citizen of Uzbekistan 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 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; (2) is a person of good moral character; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service failed to carefully consider the evidence submitted which clearly establishes the petitioner's eligibility for the benefit sought. He further asserts that the Service used an overly restrictive standard in assessing the petitioner's claims and the decision should, therefore, be vacated and the petitioner should be afforded an opportunity to present additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) 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;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner arrived in the United States as a visitor on August 26, 1993. The petitioner married her United States citizen spouse on January 28, 1999 at Bronx, New York. On August 31, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on November 16, 2000. That discussion will not be repeated here. Because evidence furnished was insufficient to establish eligibility pursuant to 8 C.F.R. 204.2(c)(1)(i)(E), (F), and (H), the director denied the petition.

Despite counsel's assertion on appeal, the record reflects that the director reviewed the evidence contained in the record and determined that the evidence of record failed to establish that the petitioner qualifies for the benefit sought. He noted that although the petitioner was requested on November 16, 2000, to submit additional evidence to address her claim that her husband molested her daughter, or that she or her children had been the subject of battery or extreme mental cruelty committed by her husband, in her response, she did not submit additional evidence or address such claim. While counsel states that the Service's decision should be vacated and the petitioner be afforded an opportunity to present additional evidence, the petitioner had the opportunity to do so when she responded to the director's November 16, 2000 request, or to supplement her petition on appeal; however, she failed to do so.



Further, even if the petitioner's child has, in fact, been the subject of extreme cruelty as claimed by the petitioner pursuant to 8 C.F.R. 204.2(c)(1)(i)(E), the petitioner still has not overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(F) and (H). The petitioner is, therefore, ineligible for the benefit sought.

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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.