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MAY 31 2002

U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

FILE: [Redacted]
EAC 00 119 54241

Office: Vermont Service Center

Date: MAY 31 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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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(b)(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. d.

Any motion must be filed with the office which originally decided your case along with a fee of \$100 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wicmann for
Robert P. Wicmann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed and the order of the Associate Commissioner will be affirmed.

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 denied the petition after determining that the petitioner failed to submit additional evidence as had been requested to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse pursuant to 8 C.F.R. 204.2(c)(1)(i)(D); (2) 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); 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).

Upon review of the record of proceeding, the Associate Commissioner noted that the petitioner failed to submit additional evidence as had been requested by the director, nor did the petitioner submit a brief and/or evidence within 30 days as stated on appeal. The Associate Commissioner further noted that counsel, on appeal, failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. He, therefore, summarily dismissed the appeal on December 17, 2001.

On motion, counsel asserts that the petitioner was with her estranged spouse until 1998; she is not yet divorced; she has not shared bed and board with her estranged spouse since 1993; she is incapable of demonstrating bona fide evidence after 1993 as there is none; nor is there any claim that the couple cohabited since 1993. Counsel further asserts that the petitioner respectfully questions the judgement of the Service that requires proof of a bona fide relationship for the period of time after the alleged abuse, and why there would be questions as to the bona fides of a marriage where there is abuse, as it would be implausible that a person would remain in a pretextual marriage if she was being endangered by domestic abuse. Counsel submits documentation previously furnished and contained in the record of proceeding.

As provided in 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A review of the record reflects that the director, in his notice of intent to deny, reviewed and discussed the evidence furnished by the petitioner to establish that she qualifies for the benefit sought. The Associate Commissioner also reviewed the evidence contained in the record of proceeding. He noted that counsel, on appeal, failed to submit additional evidence as had been requested by the director; he failed to submit a brief and/or additional evidence within 30 days as stated on appeal; and he failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Again, on motion, neither counsel nor the petitioner stated or presented new facts or other documentary evidence in support of the motion to reopen.

Accordingly, the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated December 17, 2001, is affirmed.