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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]
EAC 01 270 52571

Office: Vermont Service Center

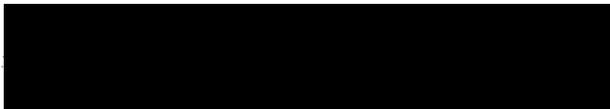
Date: Nov 8 2001

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 that 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 that 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 that 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 Mexico 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 on February 15, 2002, after determining that the evaluation from [REDACTED] stating that the petitioner had been abandoned, was insufficient to establish that the petitioner had been subjected to battery by her spouse. In addition, the director found that she had not submitted evidence to establish that her marriage included mental or emotional abuse.

In a motion to reopen the director's decision, counsel submitted an additional psychological report from [REDACTED] which asserted that the treatment of the beneficiary by her U.S. citizen spouse did rise to the level of extreme and unusual mental cruelty and emotional abuse. In this new evaluation, dated March 2002, [REDACTED] indicated that she had the opportunity to re-evaluate the petitioner almost ten months after her initial visit, and, in her opinion, the abandonment of the petitioner's spouse, his failure to provide support for her, and his failure to follow through with Immigration Service procedures, constitutes severe mental cruelty. The director determined that the psychological evaluation did not provide any additional evidence which would support the petitioner's claim that she had been the subject of extreme cruelty perpetrated by her spouse. Because the grounds for denial had not been overcome, the director again denied the petition on April 18, 2002.

On appeal, counsel reiterates his original argument that Dr. Baumann, a licensed psychologist, found that the petitioner was suffering from post traumatic disorder related to a long history of abuse, that she was much more vulnerable than others, and that the deliberate and controlling treatment and abandonment by her husband, constitutes severe mental cruelty.

8 C.F.R. 103.3(a)(1)(v) states, in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The director reviewed the additional statement from Dr. Baumann

submitted as evidence of extreme cruelty. He determined that the psychological evaluation did not provide any additional evidence which would support the petitioner's claim that she had been the subject of extreme cruelty perpetrated by her spouse.

On appeal, counsel failed to identify specifically any erroneous conclusion of law or statement of fact in the director's decision. Further, he failed to submit additional documentation to support the petitioner's claim that she was the subject of "extreme cruelty," as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.