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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 00 154 50790

Office: Vermont Service Center

Date: OCT 30 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:



FUBLIC 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. 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 dismissed.

The petitioner is a native and citizen of the Philippines 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 establish that he: (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 pursuant to 8 C.F.R. 204.2(c)(1)(i)(E); 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).

Upon review of the record of proceeding, the Associate Commissioner determined that based on the amendment to section 204(a)(1)(A)(iii) of the Act, an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a citizen or resident alien is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. Therefore, the petitioner had overcome the director's finding that he had not established that removal would result in extreme hardship pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). The Associate Commissioner, however, concurred with the director's conclusion that the petitioner had not established that he was battered or was the subject of extreme cruelty, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E), and dismissed the appeal on July 19, 2001.

On motion, counsel states that the director noted that the majority of the abuse came from the petitioner's in-laws, and since it was not directly coming from a spouse or a parent, it should not be the basis for relief. Counsel asserts that this contradicts the facts presented in the petitioner's affidavits which point out the repeated, systematic abuse that his spouse furthered, and that his spouse let her mother control the marriage and disregarded the petitioner's thoughts and feelings. He states that an abusive household, especially one in which the alien is forced to reside, can be just as traumatic and mentally scarring as one where the spouse is the sole abuser.

Counsel further states that the definition of domestic abuse has changed and is reflected in recent asylum caselaw. In this caselaw, aliens have been able to seek asylum from abusive family members

who imputed a political opinion to them and whose government was unwilling to prevent that abuse. He asserts that by allowing aliens to be granted asylum based on domestic violence perpetrated by non-spouse relatives in their own countries, it is clear that domestic violence has ceased being viewed as confined solely to spousal abuse. Counsel states that the same sort of protection should be extended under VAWA since the Act is based on the desire to enable aliens to escape domestic violence. Counsel cites a case in which an immigration judge granted asylum to a woman who was beaten and abused by her mother-in-law. Counsel asserts that the petitioner's wife was unwilling to protect the petitioner from the abuse of her mother. The petitioner's wife was in a position to move out and put an end to the verbal attacks. Using his analogy to asylum law, counsel concludes that though the petitioner's wife did not directly abuse her husband, her acquiescence to her mother's abuse when she could have prevented it, should allow the petitioner to seek relief under the VAWA.

The petitioner in this case is applying for benefits under section 204(a) of the Act, not under section 208(a) of the Act, which applies to asylum claims. Caselaw regarding asylum is not applicable here.

Pursuant to 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 motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

The record reflects that the claim of qualifying abuse was evaluated by the director after a review of all evidence in the record. He determined that the record did not contain satisfactory evidence to establish that the petitioner has been battered or has been the subject of extreme cruelty, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E). The Associate Commissioner also reviewed the record of proceeding and noted that no new evidence was furnished on appeal to overcome the director's findings.

Counsel's arguments raised in his motion to reopen were addressed by the Associate Commissioner in his previous decision. The petitioner has presented no new facts or other documentary evidence in support of the motion to reopen.

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.