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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 00 070 50583

Office: Baltimore

Date: 16 SEP 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 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the preference visa petition was revoked by the District Director, Baltimore, Maryland, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the district director for further action.

The petitioner is a native and citizen of Russia 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 February 16, 2000. On April 19, 2002, the Baltimore district director revoked the approval of the self-petition after determining that a review of the submitted documentation failed to reflect that the petitioner had been the subject of extreme cruelty perpetrated by the U.S. citizen spouse during the marriage pursuant to 8 C.F.R. 204.2(c)(1)(i)(E). He noted that although on December 4, 2001, in a notice of intent to revoke, the petitioner was afforded 84 days in which to offer evidence in rebuttal to the derogatory information, no new evidence had been received into the record.

Based on a motion to reopen and reconsider the district director's decision, filed by the petitioner on May 3, 2002, the district director determined that a complete review of the record of evidence revealed that the petition was properly denied at the time of the decision. He, therefore, upheld his decision to revoke the petition.

On appeal, counsel asserts that the decision to revoke incorrectly ignored or rejected competent testimony from a qualified mental health expert, with no contradictory evidence or other basis to reject that evidence. Further, lay adjudicators may not reject competent medical testimony without any contradictory evidence or indicia of unreliability. Counsel further asserts that the district office staff are not authorized to approve self-petitions under section 204 of the Act. As a result, they are not authorized to revoke such petitions pursuant to 8 C.F.R. 205.2(a).

8 C.F.R. 205.2(a) 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.



In this case, the Vermont Service Center approved the self-petition on February 16, 2000. The Baltimore district director revoked the approval of the self-petition on April 19, 2002. 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 decision of the district director 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 district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion.