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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



18 SEP 2002

FILE:   
EAC 01 243 51107

Office: Vermont Service Center

Date:

IN RE: Petitioner:  
Beneficiary:



**PUBLIC COPY**

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: Self-represented

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 case will be remanded to the director for further action.

The petitioner is a native and citizen of Guyana 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 he is the spouse of a citizen or lawful permanent resident of the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) because he was divorced from his allegedly abusive spouse prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the petitioner states that his representative made a mistake and did not include the name of his wife on the Form I-360 petition. He submits 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 petitioner furnished with his self-petition a copy of a divorce judgement between the petitioner and [REDACTED] effective January 28, 1997. Because the self-petition was filed on July 30, 2001, more than four years later, the director denied the petition.

On appeal, the petitioner states that his representative made a mistake and did not include the name of his present wife on the Form I-360 petition. He submits a corrected copy of the Form I-360, a copy of his marriage certificate reflecting that he married [REDACTED] on January 20, 2000 in New York, and a copy of Ms. [REDACTED] Puerto Rican birth certificate.

The petitioner has overcome the director's sole ground for denial pursuant to 8 C.F.R. 204.2(c)(1)(i)(A). The case, however, will be remanded so that the director may readjudicate the petition and determine whether all other criteria listed in 8 C.F.R. 204.2(c)(1) are satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.