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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: [Redacted]
EAC 01 165 50360

Office: Vermont Service Center

Date:

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,
EXAMINATION

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 Nigeria 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 she entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel 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 petition, Form I-360, shows that the petitioner arrived in the United States as a visitor on April 12, 1998. The petitioner married her United States citizen spouse on February 28, 1999 at Corona, New York. On April 12, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

Because the petitioner did not submit any evidence to establish the existence of a good-faith marriage, the director requested, on May 21, 2001, that she submit additional evidence. He listed examples of evidence she may submit to show good-faith marriage. The director reviewed and discussed the evidence furnished by the petitioner in response to the director's request. He noted that documents in the record show that the petitioner was living at a different address (Flushing, New York) from that of her spouse (Corona, New York).

The petitioner, on appeal, did not address this finding of the director. Further, although the director listed examples of evidence the petitioner may submit to show the existence of a good-faith marriage, the petitioner did not submit an explanation as to why such documentation is unavailable.

Counsel furnished, on appeal, affidavits from the petitioner and from her friends [REDACTED] and [REDACTED] attesting to the petitioner's relationship with her spouse and generally stating that the petitioner and her spouse shared a married life. These affidavits, without supporting documentary evidence, are insufficient to establish good-faith marriage. Furthermore, while these affidavits and other documents in the record establish that the petitioner and her spouse had resided together as provided in 8 C.F.R. 204.2(c)(1)(i)(D), the petitioner failed to establish that she entered into the marriage to the U.S. citizen in good faith, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.