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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



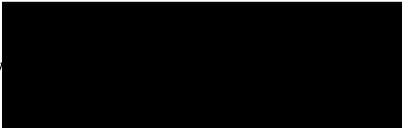
FILE:



Office: Vermont Service Center

Date: DEC 18 2003

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Boney for  
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 Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of Morocco 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 had been battered by, or had 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 had been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. The director, therefore, denied the petition.

On appeal, counsel asserts that the decision of the director (finding that a citizen spouse's commission of adultery and becoming pregnant with the child of another man during the course of the marriage), does not amount to extreme cruelty to the applicant, is erroneous as a matter of law, and is against the manifest weight of the evidence as a matter of fact. Counsel indicates that she needs 60 days to submit a brief and/or evidence to the AAO.

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.

Despite counsel's assertion, the record reflects that the director reviewed the evidence of record and determined that the intent of the extreme mental cruelty requirement did not encompass the mental anguish generally associated with marital difficulties or abandonment. He further determined that based on the submitted statements and affidavits, it cannot be concluded that the behavior of the petitioner's spouse, which also caused emotional distress and disappointment, qualified as an act of extreme mental cruelty. The director concluded that the record did not contain satisfactory evidence to demonstrate the petitioner's qualification for the benefit sought. Furthermore, counsel failed

to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Nor did she submit a brief and/or additional evidence within 60 days as stated on appeal. Accordingly, the appeal will be summarily dismissed.

It is noted for the record that the petitioner may also be ineligible, pursuant to 8 C.F.R. § 204.2(c)(1)(A), based on his divorce from his allegedly abusive U.S. citizen spouse prior to the filing of the self-petition.

**ORDER:** The appeal is summarily dismissed.