



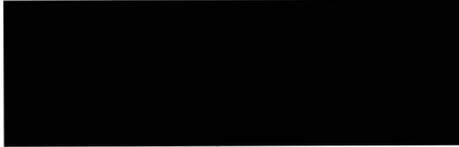
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U.S. Department of Justice
Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED]
EAC 01 115 52952

Office: Vermont Service Center

Date: **FEB 14 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)

IN 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.

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 Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, and the case will be remanded for further action.

The petitioner is a native and citizen of Haiti 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 submit evidence, as had been requested, to establish that he: (1) 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); (2) has resided in the United States with the citizen or lawful permanent resident spouse, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D); (3) 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); (4) is a person of good moral character, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F); and (5) entered into the marriage to the citizen or lawful permanent resident in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The director, therefore, denied the petition.

On appeal, counsel states that he had requested an extension of time in which to submit the evidence needed; however, the Service did not respond to the request. He added that he was under the impression that he had to wait until the Service granted him the extension before he could submit the additional evidence. Counsel submits additional evidence.

Because the petitioner submitted insufficient evidence to establish that he had met the requirements of 8 C.F.R. §§ 204.2(c)(1)(i)(A), (D), (E), (F), and (H), he was requested on March 26, 2001 to submit additional evidence. The director listed examples of evidence he may submit to establish eligibility. In response, the petitioner requested an additional 60 days in which to comply with the request. While counsel, on appeal, asserts that the Service did not respond to his request for an extension, the record reflects that on June 14, 2001, the petitioner was mailed a Form I-797 (Notice of Action) granting him an additional 60 days in which to respond to the director's request for additional evidence.

8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to

abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

An appeal was subsequently filed by the petitioner. However, there is no appeal of the director's decision in the present case. The appeal will, therefore, be rejected. The applicant, however, has submitted additional documents for the record. Therefore, the case will be remanded to the director so that he may reopen the matter on a Service motion, and adjudicate the petition supported by the additional documentation. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The appeal is rejected. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.