

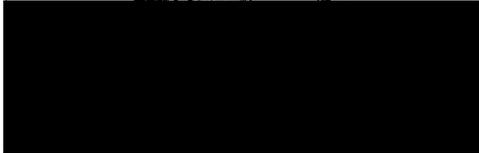


U.S. Department of Justice
Immigration and Naturalization Service

B9

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



FEB 28 2003

FILE: [REDACTED] Office: Vermont Service Center
EAC 01 165 50360

Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, and the previous decision of the Associate Commissioner will be affirmed.

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 denied the petition after determining that the petitioner failed to establish that she entered into the marriage to the U.S. citizen in good faith. The director, therefore, denied the petition.

Upon review of the record of proceeding, the Associate Commissioner noted that although the director listed examples of evidence the petitioner may submit to show the existence of a good-faith marriage, the petitioner made no explanation as to why such documentation was unavailable. Nor did the petitioner address the director's findings that the 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). He concluded that while the affidavits and other documents in the record established that the petitioner and her spouse had resided together, pursuant to 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. The Associate Commissioner, therefore, concurred with the director's conclusion and dismissed the appeal on September 18, 2002.

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.

On motion, counsel states that based on the new facts that the petitioner is pregnant, she is filing to reopen the case. She submits additional evidence.

The petitioner, in an affidavit dated October 16, 2002, states, in part:

I married my husband in February 1999 and moved in my husband's apartment in Corona, New York. Before married, I lived in Flushing, New York. After living together with my husband, I soon found he is abusive and sometimes he became really drunk and violent. After roughly six months of marriage, I escaped from the house. **I do not have any records under my name in Corona, New York because my husband controlled everything.**

This is an unhappy marriage and an abusive relationship, but it is a marriage in good faith. I did love him, married him and lived together with him as husband and wife for roughly 6 months until he became too violent.

Now, I am six months pregnant with husband's baby. I do not want move back with him and do not want my baby face the violence of my husband as I had before.

The petitioner submits a medical report from Prenatal Clinic, Bellevue Hospital in New York, indicating that the petitioner's first visit to the clinic was October 4, 2002, and that her delivery date is January 27, 2003.

While the petitioner states that she is six months pregnant with her "husband's baby," the self-petition reflects that the petitioner claimed to have resided with her husband [REDACTED] from February 1999 until November 2000. Additionally, the petitioner, on motion, states that she lived together with [REDACTED] "for roughly 6 months." She now claims that she is pregnant from her husband, approximately two years later.

Pursuant to 8 C.F.R. 204.2(c)(2)(vii), evidence of good faith at the time of marriage may include, but is not limited to, birth certificates of children born to the abuser and the spouse. No information was furnished, on motion, to establish that the petitioner and [REDACTED] had in fact reconciled and are again residing together after a separation of approximately two years. Pursuant to 8 C.F.R. 204.2(c)(2)(i), the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

As previously determined by the Associate Commissioner, the evidence of record established that the petitioner and her spouse had resided together, pursuant to 8 C.F.R. 204.2(c)(1)(i)(D). The petitioner, however, has failed to establish that she entered into the marriage to the U.S. citizen in good faith, and to overcome the findings of the director and the Associate Commissioner, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

Accordingly, the decision of the Associate Commissioner dated September 18, 2002, will be affirmed.

ORDER: The decision of the Associate Commissioner dated September 18, 2002, is affirmed.