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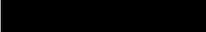
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**B9**

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

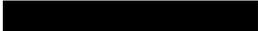
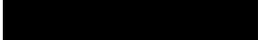
ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



FILE:   
EAC 02 019 50314

Office: Vermont Service Center

Date: **JUN 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 the Bureau of Citizenship and Immigration Services (Bureau) 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.

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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Vietnam 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: (1) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A) based on that relationship; (2) has resided in the United States with the citizen or lawful permanent resident spouse; (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; (4) is a person of good moral character; and (5) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the director erred in finding that the petitioner failed to establish eligibility under the Violence Against Women Act. He submits a brief and documents previously furnished and addressed by the director.

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 record reflects that the petitioner entered the United States with a K-1 fiancée visa on August 27, 1996. The petitioner married her United States citizen spouse within the required ninety-day period, on October 8, 1996 at Rosemead, California. On October 9, 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.

The director reviewed the record of proceeding and noted that documentation contained in the Service record contradicts all of the petitioner's claims of eligibility pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B), (D), (E), (F), and (H). The petitioner was advised of the discrepancies in the record and was requested on February 20, 2002, to submit additional evidence, including a copy of the legal termination of the marriage between [REDACTED] (the petitioner's husband) and the petitioner's sister, and an explanation of the discrepancies found in the record. The director, in his request for additional evidence and in his decision, discussed the discrepancies found. That discussion will not be repeated here. He noted that the affidavits furnished by the petitioner, in response to the director's request, did not bear enough weight, alone, by which to grant an immigrant visa. He further noted that the petitioner did not submit any other documentation to substantiate any of her claims, nor did she submit any explanation to clarify the discrepancies contained in the record.

While counsel, on appeal, argues that the petitioner and [REDACTED] are residing together, that she entered the marriage in good faith, that she has been battered or subject to extreme cruelty, and that she is a person of good moral character, he failed to submit additional documentation to substantiate these claims. Nor did the petitioner provide an explanation clarifying all of the discrepancies noted by the director and contained in the Service record. Most significantly, counsel did not address the request for repatriation submitted by the petitioner in 1997 in which she states that Hoa Luong, her husband, is really married to her sister and that her marriage is a fraud.



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.