

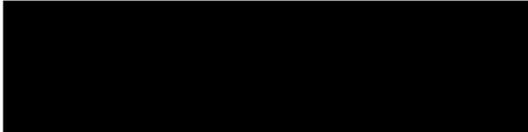
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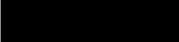
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



FILE: 
EAC 99 189 52581

Office: Vermont Service Center

Date: SEP 2 2003

IN RE: Petitioner:
Beneficiary:



PUBLIC COPY

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: Self-represented

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 the Dominican Republic 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: (1) has resided in the United States with the citizen or lawful permanent resident spouse; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that he had resided with his spouse and her mother at her mother's apartment prior to the physical separation, and that evidence of good-faith marital relationship had been submitted. The petitioner submits copies of documents previously furnished and states that he believes all documents provided to the Service Center were either ignored or misplaced.

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 as a visitor on February 22, 1995. The petitioner married his United States citizen spouse on March 27, 1997 at New York, New York. On March 8, 2002, 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, his U.S. citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that he has resided in the United States with his U.S. citizen spouse. Additionally, 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

The director reviewed and discussed all the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on September 17, 2002. He noted that the petitioner, in response, did not provide any documentary evidence to show that he and his spouse shared a common address. He further noted that the petitioner furnished insufficient evidence to establish his intent in marrying his citizen spouse.

The petitioner, on appeal, asserts that the documents he provided were either ignored or misplaced. He submits documentation previously provided and contained in the record of proceeding. This documentation, however, was evaluated and discussed by the director in his decision. He determined that the record did not contain satisfactory evidence to establish the existence of a good-faith marriage. Further, while the

petitioner states that he and his spouse resided with his spouse's mother at the mother's apartment prior to the physical separation, no evidence was furnished to corroborate this claim. Nor did the petitioner submit new evidence to establish that he entered into the marriage to the U.S. citizen in good faith.

The petitioner has failed to overcome the findings of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D) and (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.