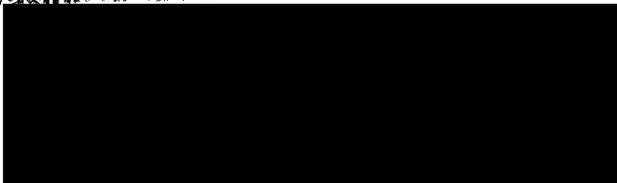


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U.S. Department of Homeland Security
Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



FILE: [Redacted]
EAC 01 176 55637

Office: Vermont Service Center

Date: SEP 25 2003

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:
[Redacted]

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 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.

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 dismissed.

The petitioner is a native and citizen of Mexico 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 on May 29, 2001, on September 26, 2001, and again on December 13, 2001, to establish that he: (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, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B); (2) 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); and (3) is a person of good moral character, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). The director, therefore, denied the petition.

On appeal, counsel submits additional evidence.

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 petition, Form I-360, shows that the petitioner arrived in the United States in May 1996. However, his current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on April 26, 1996 at Bronx, New York. On April 30, 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, his U.S. citizen spouse during their marriage.

The record reflects that at the time the petition was filed, the petitioner did not submit any evidence to establish that he met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(A), (B), (E), and (F). He was, therefore, requested on May 29, 2001, on September 26, 2001, and again on December 13, 2001, to submit evidence to establish eligibility under the criteria listed. Although the director, on December 13, 2001, granted the petitioner an additional 60 days to submit the requested documents, no response was received. The director, therefore, denied the petition based on the documentation currently contained in the record. On appeal, the petitioner submits additional documents.

Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will

be adjudicated based on the record of proceedings before the Service. In such a case, if the petitioner desires further consideration, he or she must file a new visa petition. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

There is no evidence in the record to establish that the petitioner has met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(A), (B), (E), and (F). As held in *Matter of Soriano*, documents furnished on appeal, in this case, will not be considered. If the petitioner desires further consideration, he must file a new visa petition.

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.