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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

B9



APR 20 2004

FILE:



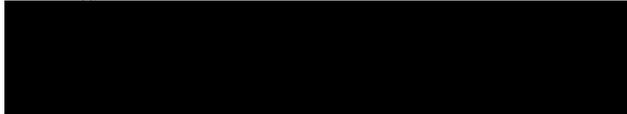
Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:



PETITION:

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 of the Administrative Appeals Office 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.

*Cindy M. Gomez for*

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 case will be remanded to the director for further action.

The petitioner is a native and citizen of Peru 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 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). The director, therefore, denied the petition.

On appeal, counsel asserts that all the documents required in support of the proof or evidence to establish extreme cruelty have been submitted. He submits copies of the evidence he states were previously furnished.

The petitioner was requested on August 9, 2002, to submit additional evidence to establish eligibility for the benefit sought. The record reflects that the petitioner's response to the director's August 9, 2002 request was received at the Service Center on October 10, 2002. On October 24, 2002, the director advised the petitioner to disregard the Form I-797, Notice of Action, dated August 9, 2002, and apologized for any inconvenience caused by the receipt of that notice. The petitioner was advised, however, that the evidence furnished to establish extreme cruelty was insufficient. He was, therefore, requested to submit additional evidence to show that he or his children had been the subject of battery or extreme mental cruelty perpetrated by his citizen spouse. The applicant was advised that he had 60 days to present additional evidence. On January 24, 2003, the applicant was granted an additional 60 days in which to submit the requested evidence. Because the record did not include a response to this notice, the director denied the petition on May 28, 2003.

The record of proceeding, however, contains the petitioner's response to the director's October 24, 2002 and January 24, 2003 requests that were received by the Service Center on May 27, 2003, prior to the denial of the petition, and was not addressed by the director in his decision.

Therefore, the case will be remanded so that the director may review the documentation furnished by the petitioner and reevaluate his decision. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.