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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]
EAC 01 230 52686

Office: VERMONT SERVICE CENTER

Date: MAY 24 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: [REDACTED] denied the preference visa petition. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before [REDACTED]. The motion to reconsider will be granted and the prior decisions of the director and [REDACTED]

The petitioner is a native and citizen of Haiti 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.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.

The petitioner failed to state any new facts or provide additional documentary evidence on motion.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part, that:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services policy.

Counsel for the petitioner stated the following reasons for reconsideration: The petitioner married a United States citizen in good faith. The petitioner resided in the United States and was subjected to extreme cruelty perpetrated by her spouse. The petitioner is a person of good moral character whose deportation would result in extreme hardship to her.

Counsel for the petitioner submits a brief citing precedent decisions to support only one of the stated reasons for the motion, i.e., that the petitioner's deportation would cause her extreme hardship. [REDACTED] the Act to strike the requirement that a petitioner establish that his or her removal would result in extreme hardship to the alien.¹ Hence, the discussion regarding hardship is no longer relevant to establishing eligibility for this visa. Further, the brief does not cite any precedent decisions relating to the remaining reasons for reconsideration, i.e., whether the evidence is sufficient to establish that the petitioner married a United States citizen in good faith and who was battered by or subjected to extreme cruelty by her citizen spouse. The petitioner failed to overcome the director's objection to approving the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The decision of the director and [REDACTED]

¹ Pub.L. 106-386, § 1503(b)(1)(A).