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FILE: [REDACTED]
EAC 03 079 51145

Office: VERMONT SERVICE CENTER

Date: **DEC 27 2005**

IN RE: Petitioner:



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, 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 summarily 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 record reflects that the petitioner married United States citizen [REDACTED] on March 27, 1997 in New Rochelle, New York. On September 13, 1997, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf.¹ The petitioner concurrently filed a Form I-485 on this same date. The Form I-130 petition and the Form I-485 application were denied on October 25, 1999 for abandonment.

On March 1, 2001, the petitioner filed a Form I-360 petition 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 petition was denied by the director on April 3, 2002 and a subsequent appeal to the AAO was summarily dismissed on October 30, 2002.

The petitioner filed the instant Form I-360 petition on January 10, 2003. The director denied the petition on March 22, 2005 finding that the petitioner failed to establish that: 1) he is eligible for classification based upon a qualifying relationship as the spouse of a United States citizen and 2) he has been battered by or subjected to extreme cruelty by his citizen spouse and 3) he is a person of good moral character and 4) entered into the qualifying marriage in good faith.

On appeal, the petitioner's statement fails to specifically identify any erroneous conclusion of law or error of fact on the part of the director. Further, the petitioner fails to address all of the director's stated grounds for denial. The statement contained on the Form I-290B indicates the following as the reason for appeal:

The Service Center erred in denying the applicant's application as a battered spouse. The applicant submitted sufficient supporting documentation so as to warrant a favorable adjudication. The officer erred in not giving the supporting documents enough weight in their assessment. The officer erred in placing undue weight on a statement that the applicant had signed in Santo Domingo in connection with his first wife. It was improper to utilize that statement because it is completely irrelevant and immaterial to the issue of whether the applicant was a battered spouse while married to his second wife. The

¹ The record also contains a previously filed Form I-130 filed in the petitioner's behalf by his first wife, [REDACTED] and approved on December 20, 1993. Although the record contains an investigative report from the U.S. consulate in Santo Domingo which indicates that the marriage between the petitioner and [REDACTED] was "entered into for the sole purpose of securing U.S. resident status," the petition was automatically revoked when the marriage was legally terminated by divorce on April 12, 1996. Despite the fact that the petition was automatically revoked, the petitioner may still be subject to section 204(c) of the Act which prohibits the approval of a visa petition if the alien has previously been accorded, or has sought to be accorded, an immediate relative status as the spouse of a citizen of the United States, by reason of a marriage determined by the Secretary of Homeland Security to have been entered into for the purpose of evading the immigration laws. However, as this appeal will be summarily dismissed, a discussion related to section 204(c) is not warranted.

officer erred in concluding that I did not establish that I was a person of good moral character. This determination was improper because I had never been arrested in the U.S. Based on the totality of the documentary evidence submitted the applicant established all of the criteria needed for a battered spouse.”

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner fails to elaborate on his statements or point to specific evidence to support his assertions that he “submitted sufficient supporting documentation so as to warrant a favorable adjudication” and that “based on the totality of the documentary evidence submitted the applicant established all of the criteria needed for a battered spouse.” The petitioner’s general claims regarding the director’s error and improper application of weight to the petitioner’s evidence is not sufficient to meet the requirements of the regulation. It is noted that pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible and the weight to be given that evidence “shall be *within the sole discretion* of the Service.” [Emphasis added.]

In addition to only generally addressing the director’s findings regarding whether the petitioner has a qualifying marriage as the spouse of a United States citizen and whether he is a person of good moral character, the petitioner offers no discussion on appeal related to the director’s findings regarding whether the petitioner was battered or subjected to extreme cruelty and whether the petitioner entered into the marriage in good faith.

Inasmuch as the petitioner has failed to specifically identify an erroneous conclusion of law or a statement of fact and failed to fully address the grounds for denial, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.