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FILE: [REDACTED]
EAC 02 246 51501

Office: VERMONT SERVICE CENTER

Date: JUN 16 2005

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (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 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 denied the petition, finding that the petitioner had failed to establish that he been battered or subjected to extreme cruelty by his United States citizen wife. The director further found that the petitioner had failed to establish that he had resided with his spouse.

On appeal, counsel for the petitioner states the following as the reason for the appeal:

The Service erred in denying [the petitioner's] I-360 petition filed under VAWA because the evidence provided by [the petitioner] was sufficient to have granted said petition. This will be elaborated upon in the brief to follow this notice within 30 days of today.

On February 17, 2005, nearly four months after the filing of the appeal, counsel submitted the brief referenced on appeal. In her brief, she states:

Applicant's VAWA application was denied because applicant had not provided evidence that he lived with his citizen or lawful permanent resident wife . . . Applicant's sister has submitted a declaration indicating that applicant did, in fact, reside with his wife

To support the claim made in her brief, counsel submits a letter from the petitioner's sister. The letter provides no specific details regarding the dates or length of time in which the petitioner and his spouse purportedly resided together. Further, although the petitioner's sister claims that the petitioner and his spouse resided together, this claim is contradicted by the petitioner's earlier statement in which he indicated that his spouse shared a room with her friend and that he never lived with his spouse. Specifically, in his statement, the petitioner indicated that:

█ and I were planning to move in together as soon as I saved enough money to be able to afford the rent in Campbell, where we both agreed we wanted to live. I asked her to wait for about three or four months while I worked so I could save money and find a vacant apartment in my nephew's building where we could move in together. Although █ did not like the idea of us not being able to live together immediately, she thought it would be fine for just a couple of months.

I was living in Campbell, California, because I was working there with my nephew at Rocko's Gardening and Landscape in Arroyo Vista. So, during the week I stayed at my nephew's house in Campbell so I could work. I did not have a driver's license at the time to drive back and forth from there to San Jose because I did not have a valid social security number to get one.

Even though I worked a lot, I would always go and see [REDACTED] on the weekends. We would always go out and do something. [REDACTED] told me she did not like being away from me and I told her I didn't like it either. Still, we agreed to do it so we could save money to move out soon.

[REDACTED] continued to share [REDACTED]'s rented room in my sister's house during the week.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if the petitioner were able to resolve these inconsistencies, counsel has failed to provide any evidence or to even address the director's finding related to the petitioner's failure to establish that he been battered or subjected to extreme cruelty by his United States citizen wife.

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.