

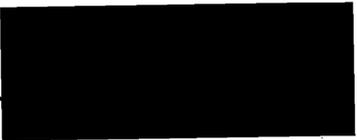


U.S. Department of Justice

Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

FILE: [REDACTED]
EAC 99 042 51435

Office: Vermont Service Center

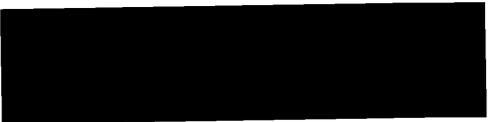
Date: FEB 2 2001

IN RE: Petitioner:
Beneficiary:



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:



Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the previous decision of the Associate Commissioner will be affirmed.

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 citizen of the United States.

The director denied the petition after determining that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive spouse prior to the filing of the self-petition.

Upon review of the record of proceeding, the Associate Commissioner noted that the final judgment of divorce became effective on April 16, 1997, and that the Form I-360 was filed with fee on April 18, 1997, two days after the divorce became final. He, therefore, concurred with the director's conclusion and denied the petition on March 31, 2000.

On motion, counsel argues that the petition was, in fact, presented to the Service on April 15, 1997 and, therefore, it was timely filed. He asserts that the petitioner and a friend went to the Service office in Westminster on April 15, 1997 to file the I-360, but that she was told she had to place the I-360 and filing fee in an envelope and put in a "drop box" by the front door. He states that the petition was subsequently recorded as being received by the Service on April 18, 1997. Counsel submits a copy of a statement from [REDACTED] which he claimed was furnished on appeal but not addressed by the Associate Commissioner.

[REDACTED] confirms that she accompanied the petitioner to the Westminster office on April 15, 1997, they were stopped by the guard at the door, and because the petitioner did not have an appointment letter, she was refused entry into the room. She was told to place her completed package in a box by the door, and that the package would be picked up by the Service at the end of the day.

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-

petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

8 C.F.R. 103.2(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached....

8 C.F.R. 204.1 states, in pertinent part:

(c) The filing date of a petition shall be the date it is properly filed under paragraph (d) of this section and shall constitute the priority date.

(d) A petition shall be considered properly filed if:

(1) It is signed by the petitioner, and

(2) A fee has been received by the Service office or United States Consular office having jurisdiction.

(3) If, during normal processing, a delay results from deficiencies in the initial filing, the priority date will be established only when the petition is properly signed by the petitioner and the fee has been collected by the Service....

Despite counsel's arguments on motion, the record reflects that the petition was properly filed on April 18, 1997, the date the Service stamped the signed petition and collected the filing fee. The petitioner's marriage to the alleged abuser legally ended through divorce on April 16, 1997, prior to the filing of the self-petition. The petitioner, therefore, remains ineligible for the benefit sought pursuant to section 204(a)(1)(A)(iii) of the Act.

Accordingly, the previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated March 31, 2000, is affirmed.