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U.S. Department of Justice
Immigration and Naturalization Service

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



15 AUG 2002

FILE: [Redacted]
EAC 00 120 52250

Office: Vermont Service Center

Date:

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:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 dismissed.

The petitioner is a native and citizen of Nigeria 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 after determining that the petitioner failed to establish that he: (1) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G); and (8) entered into the marriage to the citizen or lawful permanent resident in good faith 8 C.F.R. 204.2(c)(1)(i)(H).

Upon review of the record of proceeding, the Associate Commissioner noted that on October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000), and that section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. He, therefore, determined that the petitioner had overcome this one issue of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(G). The Associate Commissioner, however, concurred with the director's conclusion that the petitioner had failed to establish that he entered into the marriage to the U.S. citizen in good faith, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H), and affirmed the director's decision on October 22, 2001.

On motion, counsel asserts that the petitioner's failure to file his motion within 30 days of the decision should be excused because it was beyond his control. Counsel states that the Office of Administrative Appeals (AAO) issued its decision on October 22, 2001; however, as attested by petitioner's previous counsel, the decision was not received by counsel until November 19, 2001. He further states that the petitioner had no personal notification of the decision until November 23, 2001, when he received notification from counsel via U.S. mail; therefore, for reasons beyond his control, the petitioner had no opportunity to file his Motion to Reopen within 30 days of the decision of the AAO.

Pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen or reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider, 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 was beyond the control of the applicant or petitioner.

8 C.F.R. 103.5a provides, in part, that authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers may be effected by any of the following:

(a) (1) Routine service. Routine Service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(b) Effect of service by mail. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

The record reflects that on October 22, 2001, the AAO's decision was mailed to the petitioner at his last known address. A copy of the decision was also mailed to the petitioner's attorney. The decision instructed the petitioner that any motion to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reconsider.

The petitioner's prior counsel [REDACTED] states in an affidavit that on November 19, 2001, his office received the decision "from the Vermont Service Center" regarding the petitioner, and that he advised the petitioner by letter immediately.

The Service record, however, reflects that the AAO's decision was mailed from the Washington, D.C. office and not from the Vermont Service Center as stated by Mr. [REDACTED]. While a copy of a postal return receipt was furnished to show that the petitioner received mail from Mr. [REDACTED] on November 23, 2001, no evidence was furnished to establish that Mr. [REDACTED] received the AAO's decision on November 19, 2001. Furthermore, the AAO's decision was mailed to the petitioner at his last known address on October 22, 2001. There is no evidence that the AAO's decision was returned to the Service as undeliverable. Upon receipt, the petitioner could have conferred with his attorney regarding the denial of his petition. Further, while former counsel states that he did not receive the AAO's decision until November 19, 2001, the motion was received by the

AAO 44 days after the date he claimed to have received the decision. The petitioner, on motion, has not demonstrated that the delay was reasonable and was beyond his control.

The petitioner had 30 days after October 22, 2001 in which to file a motion to reopen or a motion to reconsider. 8 C.F.R. 103.5(a)(1)(i). This motion was received by the Service on January 2, 2002. Pursuant to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.