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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

[Redacted]

FILE: [Redacted]  
EAC 97 207 51159

Office: Vermont Service Center

Date: JUL 08 2002

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

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:

[Redacted]

Public Copy

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

*Robert P. Wiemann*  
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 Bosnia who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii) or 1154(a)(1)(B)(ii), as the battered spouse of a citizen or lawful permanent resident of the United States.

The director denied the petition on December 23, 1997, after determining that the petitioner failed to submit evidence as had been requested on August 13, 1997, to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States pursuant to 8 C.F.R. 204.2(C)(1)(i)(A); (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship pursuant to 8 C.F.R. 204.2(C)(1)(i)(B); (3) is residing in the United States pursuant to 8 C.F.R. 204.2(C)(1)(i)(C); (4) has resided in the United States with the citizen or lawful permanent resident spouse pursuant to 8 C.F.R. 204.2(C)(1)(i)(D); (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage pursuant to 8 C.F.R. 204.2(C)(1)(i)(E); (6) is a person of good moral character pursuant to 8 C.F.R. 204.2(C)(1)(i)(F); (7) is a person whose deportation (removal) would result in extreme hardship to herself, or to her 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 pursuant to 8 C.F.R. 204.2(C)(1)(i)(G).

Upon review of the record of proceeding, the Associate Commissioner determined that the petitioner had failed to submit evidence as had been requested by the director. He noted that although counsel, on appeal, indicated that she was sending a brief and/or evidence within 30 days, no brief or additional evidence was received into the record of proceeding eleven months later. He, therefore, dismissed the appeal on January 22, 1999.

On motion, counsel submits additional evidence. He also requests for deferred action status based on the I-360 petition in order to request work authorization pursuant to 8 C.F.R. 274a.12(c)(14). A request for deferred action or a request for work authorization is not within the jurisdiction of the Associate Commissioner.

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 January 22, 1999, the Administrative Appeals Office's decision was mailed to the petitioner in care of her attorney at her 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 decision was not returned to the Service as undeliverable.

Counsel, on motion, submits additional evidence including copies of letters from the petitioner addressed to the State Bar of California dated May 30, 2001 and June 27, 2001, advising the Bar that she was never informed by Mrs. [REDACTED] her former attorney, regarding the denial of her petition although she spoke to her attorney in August 1999. It is noted, however, that Mrs. [REDACTED] stated on appeal, filed on January 22, 1998: "THIS OFFICE AS REPRESENTATIVE OF MRS [REDACTED] DID NOT RECEIVE YOUR REQUEST FOR ADDITIONAL INFORMATION AS ALLEGED ON YOUR DECEMBER 23, 1997 LETTER. WE HAVE INQUIRED FROM MRS. [REDACTED] AND SHE ADVISED THAT SHE DID NOT RECEIVED SAID REQUEST AS WELL. WE HEREBY REQUEST ADDITIONAL TIME TO PROVIDE THE REQUESTED EVIDENCE."

It appears that counsel was in contact with the petitioner prior to the filing of the appeal on January 22, 1998. The petitioner had the opportunity at that point to confer with her attorney regarding the denial of her petition and to work with her attorney regarding the submission of the evidence requested by the director. The petitioner, on motion, has not demonstrated that the delay was



reasonable and was beyond her control pursuant to 8 C.F.R. 103.5(a)(1)(i).

The petitioner had 30 days after January 22, 1999, 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 over three years later, on April 12, 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.