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U.S. Department of Justice
Immigration and Naturalization Service

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MAY 10 2002
DIVISION OF POLITICAL PROTECTION

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



FILE: [REDACTED]
EAC 99 225 51505

Office: Vermont Service Center

Date: MAY 10 2002

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: Self-represented

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 granted and the case will be remanded to the director for further consideration and action.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident 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 permanent resident spouse prior to the filing of the self-petition.

Upon review of the record of proceeding, the Associate Commissioner noted that although a motion was filed with the court to set aside the divorce, no documentary evidence was furnished to establish that the court vacated or set aside the previous judgement of divorce entered on July 20, 1999; therefore, without this evidence, the final judgement of divorce is considered valid. The Associate Commissioner dismissed the appeal on October 22, 2001.

On motion, the petitioner submits a copy of the court docket reflecting that the order to set aside the divorce was granted on January 14, 2000. The petitioner also submits a certified copy of her marriage license.

It is noted, however, that the court docket furnished on motion is a computer listing and was not certified by the court. The case will be remanded so that the district director may give the applicant an opportunity to submit a certified copy of the order setting aside the divorce, and to determine whether the criteria listed in 8 C.F.R. 204.2(c)(1) is satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The Associate Commissioner's decision dated October 22, 2001 is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.