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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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



FILE: [REDACTED]
EAC 01 225 50725

Office: Vermont Service Center

Date: 30 OCT 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

**identifying data deleted to
prevent clearly and warranted
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

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 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 the petitioner filed her self-petition on July 9, 2001, more than two years after the divorce from her lawful permanent resident spouse became final on September 26, 1996. The Associate Commissioner, therefore, concurred with the director's conclusion and denied the petition on May 9, 2002.

On motion, the petitioner states that she had timely requested the filing of this petition from her attorney, but that once the attorney saw that it was too late to file, she refunded the petitioner's money. The petitioner further states that when she returned to see her attorney, the attorney was not available to answer any of her questions. She submits copies of receipts for services rendered by Travelers & Immigrants Aid dated August 21, 1996 and September 11, 1996.

As provided in 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A review of the record reflects that the director and the Associate Commissioner reviewed the record of proceeding and determined that the petitioner failed to qualify for the benefit sought. While the petitioner states that she had timely filed her petition with the attorney, the Service is not responsible for the inaction of her representative. The self-petition was not properly filed with the Service until July 9, 2001.

Accordingly, the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated May 9, 2002, is affirmed.