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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



30 OCT 2002

FILE:  Office: Vermont Service Center
EAC 00 090 53862

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:



identifiable information
prevented by redacted
invasion of personal privacy

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 The motion will be granted, the previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is a native and citizen of the Dominican Republic 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's response to his request to submit additional evidence did not include sufficient evidence to establish that she: (1) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith.

Upon review of the record of proceeding, the Associate Commissioner noted that counsel stated, on appeal, that he was preparing and collecting evidence that will be submitted within the 30-day period. Because it had been approximately eight months since the filing of the appeal and neither a brief nor additional evidence had been entered into the record of proceeding, the Associate Commissioner summarily dismissed the appeal on August 21, 2001.

On motion, counsel states that he had originally sent a complete package of information to the Service, including a brief, photos, court documents, and affidavits of witnesses. However, that package was returned to him by [REDACTED] stating that the address provided [REDACTED] does not exist. He confirmed with a map of [REDACTED] that it is [REDACTED]. Counsel states that he re-sent the package again by [REDACTED] and they now indicate that they have no record of ever receiving that package for shipment. He resubmits copies of documents he claims were previously submitted.

Counsel states that this response is not within the 30-days allowed as they were out of their office for a period of time after the September 11 World Trade Center disaster, and that "(we were blocks away from ground zero) and then [REDACTED] was injured in an accident."

Pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.