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U.S. Department of of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]
EAC 02 163 52567

Office: Vermont Service Center

Date: **AUG 25 2003**

IN RE: Petitioner:
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[REDACTED]

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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, and the case will be remanded to the director for further action.

The petitioner is a native and citizen of El Salvador 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 submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, counsel asserts that the Service's request for further documentation/proof of the underlying petition, was never forwarded to the petitioner by [REDACTED] (petitioner's former representative). He states that when he contacted Ms. [REDACTED] she indicated that she did receive mail from the Service. The mail was subsequently forwarded to the petitioner; however, Ms. [REDACTED] failed to include a copy of the original request the Service states was attached to its January 17, 2003 correspondence. Counsel asserts that to this date, the petitioner remains unaware as to what further documents the Service is requiring to support the initial petition. He further asserts that the petitioner was not properly represented, she was never provided notice of the status of the petition nor informed that the Service required additional information/documentation, and she was never given a complete copy of the documents/application that was forwarded to the Service in the initial application process. Counsel submits additional documentation.

Because the petitioner failed to respond to the director's request of July 23, 2002 to provide additional evidence to establish that she had met the requirements of 8 C.F.R. § 204.2(c)(1), the petition was denied on January 17, 2003.

8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.



An appeal was subsequently filed by the petitioner. However, there is no appeal of the director's decision in the present case. The appeal will, therefore, be rejected. The applicant, however, has submitted additional documents for the record. Therefore, the case will be remanded to the director so that he may reopen the matter on a Service motion, and to adjudicate the petition supported by the documentation. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The appeal is rejected. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.