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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE:



Office: Vermont Service Center

Date:

DEC 17 2003

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)

ON BEHALF OF PETITIONER: Self-represented

**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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. On appeal, the Administrative Appeals Office (AAO) remanded the application to the director for further action. The AAO will reopen this proceeding on its own motion, withdraw its previous decision, and dismiss the appeal.

The petitioner is a native and citizen of Romania 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 determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive U.S. citizen spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the AAO found the director's decision to be correct. Because the record contained an unadjudicated Form I-751 (Petition to Remove the Conditions on Residence), the AAO remanded the file for the director to review that petition.

Because the adjudication of the Form I-751 is not relevant to the proceedings at hand, the AAO withdraws its prior decision to remand the case to the director and limits its decision to the adjudication of the Form I-360 (Petition for Amerasian, Widow or Special Immigrant) on which the appeal was based.

The specifics of the application were discussed at length in the initial decision and will not be repeated here. The essential issue is the fact that the petitioner was divorced from her allegedly abusive husband on February 13, 1996. She filed her I-360 self-petition on September 9, 2002, more than six years after her divorce.

Section 1503(b) of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000) amended section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past two

years and battering or extreme cruelty by the United States citizen spouse. *Id.* section 1503(b), 114 Stat. at 1520-21.

The record clearly reflects that the applicant did not submit her application within two years of her divorce. Therefore, she is not eligible for benefits under section 204(a)(1)(A)(iii) of the act.

**ORDER:** The AAO's previous decision is withdrawn and the appeal is dismissed.