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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted]
EAC 01 012 53794

Office: Vermont Service Center

Date: FEB 24 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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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 Administrative Appeals Office (AAO) 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)(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 on June 15, 2001, after determining that the petitioner failed to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A); (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A), based on that relationship, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B); and (3) is a person of good moral character, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

Upon review of the record of proceeding, the Associate Commissioner noted that the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The Associate Commissioner further noted that although the petitioner requested an additional 90 days in which to submit additional evidence, none was received by the Service, approximately 11 months after the appeal. The Associate Commissioner, therefore, summarily dismissed the appeal on July 8, 2002.

On motion, counsel asserts that on May 31, 2002, she submitted all of the information and supporting documents requested, and that the decision of July 8, 2002, did not seem to take into account that additional material. She submits copies of the petitioner's divorce decree from her former spouse [REDACTED], effective January 31, 1989, and an abstract of marriage for the petitioner and her current husband [REDACTED] dated December 28, 1989. Both documents were already contained in the record of proceeding. She also submits a petition for divorce between [REDACTED] and [REDACTED], reflecting that they were married on May 7, 1991, and a divorce decree for [REDACTED] and [REDACTED] effective June 23, 1999. Counsel also asserts that the applicant never departed the U.S. since her entry in 1985. This statement is contradicted by the applicant's affidavit filed with her application in which she indicates that she and her children lived in Mexico for three months in 1990.

The applicant still has not addressed the district director's finding that she had not established good moral character. She has

failed to explain why she did not mention her first marriage or her order of deportation in her application. In addition, she has not provided, as requested, evidence of her valid entry after her 1990 departure.

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. The petitioner has presented no new facts or other documentary evidence to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A), (B), and (F).

Accordingly, the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated July 8, 2002, is affirmed.