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

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



JUN 16 2003

FILE: 
EAC 02 022 50496

Office: Vermont Service Center

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:



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 on appeal. The appeal will be rejected.

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) or 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) or § 1154(a)(1)(B)(ii), as the battered spouse of a citizen or lawful permanent resident of the United States.

The director determined that the petitioner failed to provide evidence, as had been requested, to establish that she was eligible for classification under any of the categories for which the petition was designed. The director, therefore, denied the petition.

On appeal, the petitioner, through counsel, states that she needs 60 days in which to obtain documents from Mexico and from the United States regarding the health of her mother, and to obtain affidavits from friends and relatives regarding her ability to support herself and her mother. However, it has been approximately nine months since the filing of the appeal in this matter, and no additional evidence has been provided.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen

or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

On October 1, 2001, a Form I-360 was filed by the petitioner. The director noted that the petitioner indicated on the petition that the classification requested was based on hardship. On March 11, 2002, the Service notified the petitioner that there is no eligibility category on the self-petition for hardship. She was, therefore, requested to comply with the instructions on the form that apply to her situation. Because the petitioner had not provided sufficient evidence to show that she was eligible for classification under any of the categories for which the petition was designed, the director denied the petition on July 19, 2002.

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.

There is no appeal of the director's decision in the present case. The appeal will, therefore, be rejected. If the applicant has additional evidence for the record, such documentation should be forwarded on a motion to reopen to the office having jurisdiction over the present application (the office which rendered the initial decision).

Additionally, 8 C.F.R. § 103.3(a)(2) states, in pertinent part, that the affected party shall file an appeal, with fee, including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(1), states:

An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record reflects that the director denied the self-petition on July 19, 2002. The applicant was advised that she may file an appeal, along with the required fee and any supporting brief within

30 days of the service of the decision (33 days if the notice was received by mail). On August 27, 2002, approximately 39 days after the director's decision, the appeal was filed with the Service.

Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.