

**PUBLIC COPY**

**identifying data deleted to  
prevent disclosure of  
invasion of personal privacy**

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

**B9**

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



APR 24 2008

FILE:   
EAC 00 242 50293

Office: Vermont Service Center

Date:

IN RE: Petitioner:   
Beneficiary: 

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

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 Bureau of Citizenship and Immigration Services (Bureau) 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, and the order of the AAO will be affirmed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition after determining that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive lawful permanent resident spouse prior to the filing of the self-petition. The director, therefore, denied the petition.

The AAO determined that the petitioner did not qualify under the October 28, 2000 amendment to the Violence Against Women Act because the petitioner and her permanent resident spouse were divorced on November 29, 1994, more than two years prior to the filing of the self-petition on July 25, 2000. The AAO, therefore, concurred with the director's conclusion and dismissed the appeal on December 19, 2001.

On motion, counsel asserts that the finding that the Form I-360 self-petition was filed on July 25, 2000 was an error as the enclosed receipt shows that the I-360 was filed on April 29, 1998. He contends that the director can waive the time limit for filing, and that the petitioner's extraordinary circumstances merit equitable tolling. Counsel further states that rarely has a person been so devastated by the abuse given by a spouse, and that the potential for abuse to continue is a part of the motion to reopen for political asylum.

As previously noted by the AAO, there is no provision in the statute that permits the Service to waive the time limit for filing or to permit the late or early filing of a Form I-360 self-petition. Further, the motion to reopen for political asylum is not under the jurisdiction of the AAO. An application for asylum must be filed with the Service Center having jurisdiction over the applicant's place of residence as stated in the instructions for the I-589 Application for Asylum. The I-589 included with the current motion is being returned to counsel under separate cover so that it may be properly filed.

Counsel asserts that the Form I-360 was filed on April 29, 1998. The record reflects that the 1998 petition was denied by the director on August 26, 1998, due to abandonment, after the petitioner failed to submit evidence as requested by the director

on May 14, 1998. On November 2, 1998, the petitioner filed a motion to reopen the director's decision. On November 23, 1998, the director dismissed the motion, pursuant to 8 C.F.R. § 103.5(a)(4), because the petitioner had not demonstrated that she had met any of the three criteria listed under which the Service may reopen an abandoned petition. The petitioner filed a new petition on July 25, 2000. This petition is the subject of the current motion to reopen.

Despite counsel's assertion on motion, the petitioner does not qualify under the VAWA amendment because the petitioner was divorced from her permanent resident spouse on November 29, 1994, more than two years prior to the filing of the self-petition. It is noted that even if the April 29, 1998 petition were to be considered, she still would not qualify under the VAWA amendment because she was divorced more than two years prior to the filing of that petition.

Accordingly, the motion will be dismissed.

**ORDER:** The decision of the AAO dated December 10, 2001, is affirmed.