

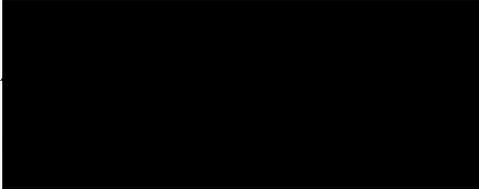


U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 13 2004

EAC 01 178 54750

IN RE:

Petitioner:

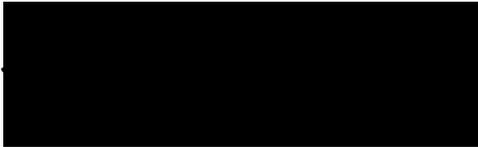


Beneficiary:

PETITION:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 was appealed to the Administrative Appeals Office (AAO). The AAO dismissed the initial appeal on September 18, 2002. The petitioner filed a motion to reopen. On May 16, 2003, the AAO granted the motion and reaffirmed its initial decision denying the petition. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a native and citizen of Trinidad 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.

On March 15, 2002, the director determined that the petitioner failed to establish that she entered into the marriage to the citizen in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The director, therefore, denied the petition. As indicated above, the AAO dismissed the petitioner's appeal and a subsequent motion to reopen.

The petitioner attempted to file the second motion to reopen on June 16, 2003. The motion was rejected because the petitioner failed to include the filing fee with the motion. The director issued a notice of rejection to the petitioner. The petitioner resubmitted the motion with the correct filing fee on July 7, 2003, more than 33 days from the date of the decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reconsider an action by [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] 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 [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the director's decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "[a] motion that does not meet applicable requirements shall be dismissed."

The record reflects that the AAO reaffirmed its prior decision on May 16, 2003. The petitioner was advised that she could file an appeal or a motion, along with the required fee, within 30 days of the date of the decision. The applicant subsequently filed a motion on July 7, 2003, approximately 52 days after the AAO's decision.

Based on the applicant's failure to file a timely motion, the motion will be dismissed.

**ORDER:** The motion is dismissed. The prior decisions of the AAO and the director are affirmed.