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

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

BA



FILE:

Office: Denver

Date:

JAN 13 2004

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:



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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the preference visa petition was revoked by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the district director for further action.

The petitioner is a native and citizen of Colombia 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 district director revoked the approval of the self-petition after determining that the petitioner had remarried.

On appeal, counsel asserts that section 204(h) of the Act prohibits what the Service is attempting to undertake in this case. He states that this section provides that a legal termination of a marriage and a subsequent re-marriage where a petition has been approved should not be the basis for revocation.

8 C.F.R. § 205.2(a) states:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in section 205.1 when the necessity for the revocation comes to the attention of this Service.

In this case, the Vermont Service Center approved the self-petition on October 13, 2000. The Denver district director revoked the approval of the self-petition on February 7, 2003. 8 C.F.R. § 103.1(g)(2)(ii)(B) states, in part:

District directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers....or exclusively delegated to service center directors....

In a notice dated April 7, 1997 (62 FR 16607), the Commissioner announced the Service's plan to expand the Direct Mail Program, and that the Service would require that all Forms I-360, filed by a self-petitioning battered spouse, child, or by the parent of a battered child, be mailed directly to the Vermont Service Center. According to 62 FR 16607, effective May 7, 1997, Forms I-360 for self-petitioning battered spouses and children residing within the



United States must be mailed, with all supporting documentation, directly to the Vermont Service Center, and that appeals and motions filed during the transition period, and after the notice goes into effect, should be filed with the Vermont Service Center and will be processed by that office.

Accordingly, based on 8 C.F.R. § 205.2(a) and 62 FR 16607, the decision of the district director will be withdrawn, and the case will be remanded so that the district director may forward the petition, with all supporting documentation, including the applicant's complete A file, to the Vermont Service Center for their review.

ORDER: The district director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion.