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

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



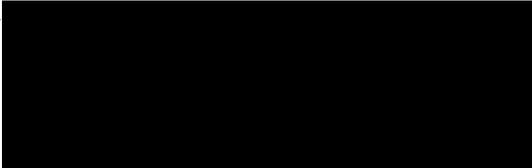
JAN 29 2004

FILE: 
EAC 02 094 53272

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)

ON BEHALF OF PETITIONER: Self-represented

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.

Robert P. Wiemann
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 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 determined that the petitioner failed to submit additional evidence, as had been requested, to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; (2) is a person of good moral character; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the applicant asserts that since January 25, 2002, neither she nor the Citizenship Project received any correspondence from the Service. She states that the denial letter dated November 1, 2002, indicated that she had been granted 60 days to present additional evidence but it did not indicate when the request was sent to her or to the Citizenship Project. She indicates that she is sending a brief and/or additional evidence within 30 days. However, to date, neither a brief nor additional evidence has been received.

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.

The record reflects that the petitioner married her United States citizen spouse on January 6, 2001 at Salinas, California. She last entered the United States as a visitor on January 22, 2001. On January 22, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

Because evidence furnished with the self-petition was insufficient to establish that the petitioner met the requirements of 8 C.F.R. § 204.2(c)(1)(i)(D), (F), and (H), she was requested on June 6, 2002 to submit additional evidence. The petitioner was advised that she had 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. She was further advised that if her response was not received by CIS within the time limits, a decision would be rendered based on the evidence previously submitted. The director listed examples of the evidence the petitioner may submit to show joint residence, good-faith marriage, and that she has been the subject of extreme cruelty. Based on the petitioner's failure to respond within the allowable period of time, the director denied the petition.

The petitioner, on appeal, asserts that neither she nor The Citizenship Project received any notice requesting additional



evidence, and that the director's decision did not indicate when the request for additional evidence was sent.

The record reflects that the notice, dated June 6, 2002, was mailed to the petitioner in care of The Citizenship Project at the address listed on her self-petition. The notice was not returned to the Service as undeliverable. Furthermore, the director attached to his decision to deny the petition dated November 1, 2002, a copy of his June 6, 2002 notice of request for additional evidence. He indicated in his decision that "[a] copy of the Service's notice requesting evidence is enclosed for your review."

The petitioner, on appeal, has failed to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), (F), and (H).

It is noted that the petitioner's status was adjusted to that of a CR-1 (conditional permanent resident) on July 16, 2002, based on her marriage to this same citizen spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.