

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship
and Immigration
Services

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MAY 11 2004



FILE:

EAC 02 237 53693

Office: VERMONT SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. Counsel appealed the director's denial to the Administrative Appeals Office (AAO). The matter is now before the AAO 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) 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 denied the petition, finding that the petitioner failed to establish that he is the spouse of a citizen or lawful permanent resident of the United States and that he entered into the marriage to the citizen or lawful permanent resident in good faith. Counsel appealed the director's decision, indicating that a Form G-28, Notice of Entry of Appearance as Attorney or Representative, would be submitted under separate cover. More than seven months have lapsed since the appeal was filed and a Form G-28 has not been submitted for the record.

According to the regulation at 8 C.F.R. § 292.4(a), in order for the appearance to be recognized by Citizenship and Immigration Services (CIS), the appearance as attorney or representative in a visa petition proceeding must be filed on the appropriate form and must be signed by the applicant or the petitioner in the proceeding authorizing representation. The appropriate form is the G-28. The appeal in this matter was filed without a Form G-28. The Form I-290B Notice of Appeal was signed by the attorney alone.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) provides, in pertinent part, that:

For purposes of [appeals], *affected party* . . . means the person or entity with legal standing in a proceeding.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. Only the affected party or attorney of record may file an appeal.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.