

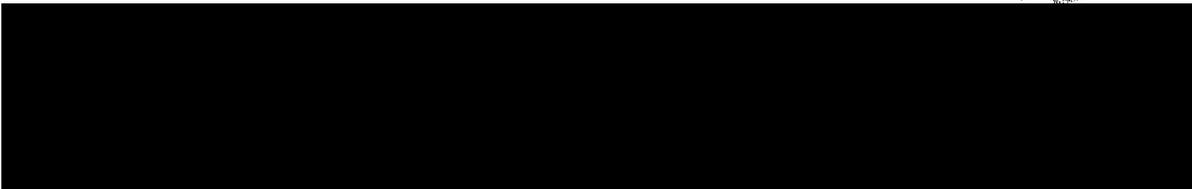
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U.S. Citizenship
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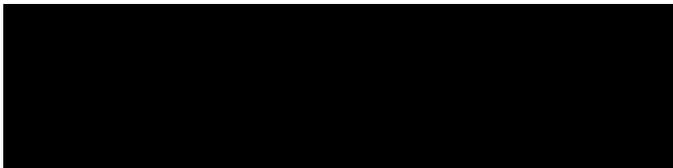
Office: VERMONT SERVICE CENTER

Date: FEB 10 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, initially approved the preference visa petition. Upon further review, the director determined that the petitioner had been approved in error. The director properly served the petitioner with a notice of intent to revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a native and citizen of Ecuador 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.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] May 1, 1996. The petitioner's spouse filed a Form I-130 petition on her behalf on May 30, 1996. The Form I-130 petition and a concurrently filed Form I-485 were denied for abandonment on May 4, 1999. The petitioner was placed in removal proceedings on June 7, 1999. The petitioner filed a Form I-360 self-petition on February 2, 2001, 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. On January 4, 2002, the director approved the petition. On September 27, 2002, an immigration judge administratively closed proceedings to permit the Vermont Service Center to reconsider the I-360 approval. On January 28, 2004, the acting director issued a notice of intent to revoke. The acting director considered the petitioner's subsequent rebuttal, and on May 27, 2004, issued a final notice of revocation. In that notice, the acting director concluded that the petitioner had failed to demonstrate that she had been battered or the subject of extreme cruelty perpetrated by her citizen spouse and that she entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a brief.

In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision to revoke approval of the petition on May 27, 2004. It is noted that the director incorrectly advised the petitioner that its Notice of Appeal must be filed within 30 days of the Notice of Revocation. Citizenship and Immigration Services (CIS) received the Notice of Appeal on June 25, 2004, or 29 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.