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

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 09 2006

IN RE:

Petitioner:



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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The petitioner is a native and citizen of Venezuela who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that his or her marriage to the United States citizen was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by his or her spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

In this case, the petitioner filed her Form I-360 on September 11, 2002. Finding the evidence submitted with the petition to be insufficient, the director issued a Request for Evidence (RFE) on May 1, 2003 asking the petitioner to submit, *inter alia*, proof of her good moral character. On June 7, 2003, the petitioner timely responded to the RFE, but her response included no evidence of her good moral character. Consequently, the director denied the petition on February 20, 2004. The director's decision properly gave notice to the petitioner that she had 33 days to file an appeal. The petitioner filed a Form I-290B on April 19, 2004, which was rejected on April 29, 2004 for lack of the proper fee. The petitioner re-filed her Form I-290B on March 9, 2005, nearly a year after the director's decision was issued.

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).

On her Form I-290B, the petitioner did not state any reason for the appeal, but indicated that she needed more time to submit a brief and/or evidence to the AAO. The evidence submitted with the Form I-290B neither relates to the petitioner's good moral character nor includes documents that would warrant treatment of her untimely appeal as a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). Accordingly, the director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

The petitioner's appeal was filed on March 9, 2005, nearly a year after the director denied the petition. As the appeal was untimely filed, it must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(i). This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) of the Act with the requisite supporting documents and filing fee or a documented request for a fee waiver.

ORDER: The appeal is rejected.