

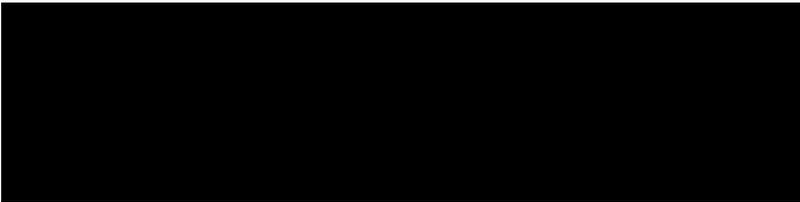


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9



FILE: [REDACTED]
EAC 04 006 52637

Office: VERMONT SERVICE CENTER

Date: JUN 28 2005

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

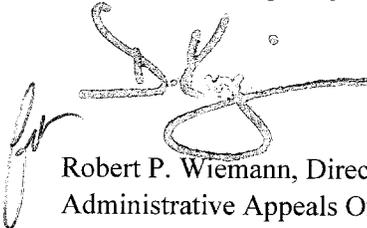
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and 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 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 record reflects that the petitioner wed United States citizen [REDACTED] on January 17, 1997, in Queens, New York. On January 21, 1997, the petitioner's spouse filed a Form I-130 petition on her behalf. The petition was denied for abandonment on March 1, 1999. On October 4, 2003, the instant 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.

On August 5, 2004, the director requested the petitioner to submit further evidence. The director listed evidence that should be submitted, including:

- Reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, etc. related to the petitioner's claimed abuse.
- Evidence that the petitioner sought refuge in a shelter for the abused.
- Photographs of the petitioner's injuries and affidavits from witnesses.
- A specific and detailed statement from the petitioner describing her relationship with her spouse, the type of abuse suffered, and the after-effects of the abuse.
- Any evaluations from counselors or psychiatrists.
- A police clearance from each place the petitioner resided for at least 6 months during the 3-year period prior to filing the Form I-360 petition.¹

The director afforded the petitioner 60 days in which to respond to the request for evidence.

The petitioner did not respond to the director's request and the director denied the petition, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

The petitioner, through counsel, filed an appeal on January 6, 2004. On appeal, counsel apologizes for the untimely filing of the appeal and explains that she was sick. As it relates to the director's decision, counsel claims that neither she nor the petitioner received notice of the director's request for evidence. Counsel further claims that she is sending a brief and/or evidence to the AAO within 30 days. However, to date, the record does not contain a supplemental appellate brief or evidence. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause. We, therefore, consider the record to be complete as it now stands.

¹ The director noted that as the petitioner had at least three aliases, any record check performed on the basis of a "name check" only must include all aliases otherwise a fingerprint check would be appropriate.

A review of the record indicates that the director properly issued the request for evidence to petitioner's counsel, at counsel's address of record.² Further, the record does not contain any evidence that the director's request for evidence was returned as undeliverable or for any other reason.

Accordingly, we find insufficient evidence to establish that the director committed any procedural error, or any error of fact or law, in denying the petition based on the petitioner's failure to establish eligibility.

Regardless, 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 the 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 record reflects that the director issued the decision on December 3, 2004. The appeal was received by the director on January 6, 2005, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.³

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.

² The director's denial of the petition was mailed to and received by counsel at this same address.

³ Counsel's excuse for the delay in filing is immaterial. There are no provisions, such as "good cause" that allow for a waiver of the requirements for the filing of a timely appeal.