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FILE: [REDACTED]
EAC 02 034 50258

Office: VERMONT SERVICE CENTER

Date: JUL 13 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:

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 preference visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner 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).

The record reflects that the petitioner wed United States citizen Phat Nguyen on August 31, 1995, in Las Vegas, Nevada. On November 7, 1995, the petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. The petition was approved on December 4, 1997.

On November 2, 2001, 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 citizen spouse during their marriage.

The director denied the petition on March 29, 2002 based on a determination that, at the time of filing, the petitioner had not been a bona fide spouse of a United States citizen within the past two years as required by the Act.

On April 27, 2002, the petitioner filed an appeal to the director's decision. The AAO dismissed the appeal on December 16, 2002, noting that as the Act contains no provision to waive the two-year requirement, the petitioner's claim that she lacks knowledge of immigration laws and that she is primarily responsible for the welfare of her son, do not overcome the "clear language of the statute."

On January 14, 2003, the petitioner filed the instant motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(2) states that a "motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In a statement provided with her motion, the petitioner claims that the reason she did not file her petition within the two-year period after the termination of her marriage is because of "the erroneous advice of [Catholic Charities]."

Although the petitioner does not specifically state that she believes she received ineffective assistance from Catholic Charities, we note that a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The petitioner has not submitted any of the above-required documents to establish ineffective assistance of counsel.

Even if the petitioner were able to establish that Catholic Charities was the reason for her failure to file the petition within the required two-year period, as noted in our previous decision, the regulation does not contain any waiver for the failure to file within the relevant two-year period, regardless of the reason for the failure to file.

In support of the motion, the petitioner also submits copies of two documents already contained in the record and a copy of her annual evaluation from her current employer. We do not consider the documents previously submitted as presenting any new facts to support the reopening of the petitioner's case. Further, although the petitioner's employment evaluation had not been submitted previously, the petitioner does not provide any explanation for its relevance to the issue of the petitioner's failure to file her petition within the two-year period after the termination of her marriage.

Accordingly, the petitioner's motion to reopen does not meet the requirements of the regulations and must be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed. The petition is denied.