



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



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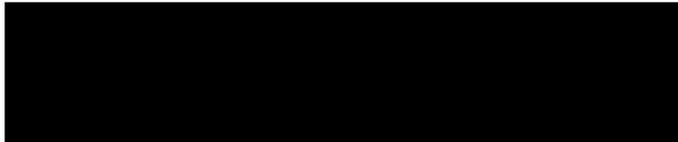
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FILE: [Redacted]
EAC 98 002 32969

Office: Vermont Service Center

Date: NOV 29 2000

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



Identifying data removed to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed and the order of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Honduras who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition after determining that the petitioner failed to establish that she is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

Upon review of the evidence furnished on appeal, the Associate Commissioner concurred with the director's conclusion that the petitioner failed to establish that her removal from the United States would result in extreme hardship, and denied the petition on November 30, 1999.

On motion, counsel claims that the petitioner's children are now in the United States under Temporary Protected Status (TPS). He states that the petitioner's daughter [REDACTED] suffers from a disorder which caused blindness in her left eye, she was indeed treated in Honduras for this condition, and she is currently being treated for her medical condition in the United States. Counsel asserts that a letter from [REDACTED] doctor will be provided, the petitioner is ordering [REDACTED] medical records from Honduras, additional reports will be supplied relating to the conditions in the petitioner's home country, and that a legal brief will also be provided.

Pursuant to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4).

On motion, filed December 27, 1999, counsel submits a Form I-797C as evidence that the petitioner's daughter [REDACTED] has been granted TPS under section 244 of the Act, 8 U.S.C. 1254a. He states that he needs 60 days to submit a brief and/or evidence. On February 15, 2000, counsel requested an additional 60 days to provide supplementary evidence. He submitted a letter dated January 24, 2000, from [REDACTED] Chief, Section of Ophthalmology, St. Christopher's Hospital for Children, Philadelphia, Pennsylvania. On June 15, 2000, counsel again requested an additional 60 days to

provide supplementary evidence. It has been approximately eleven months since the motion to reopen was filed and no additional evidence has been entered in the record of proceeding.

The letter from [REDACTED] states that the petitioner's daughter, [REDACTED] has been his patient since June 22, 1999, his diagnosis was early-onset cataract in the left eye with secondary amblyopia and strabismus, she underwent surgery on October 14, 1999, and he last examined her in the middle of November 1999. While [REDACTED] states that [REDACTED] would benefit from a second strabismus surgical procedure, it has not been established that she has since obtained this surgery, or that this type of surgery is not available to her in Honduras.

While the record established that the petitioner's daughter has been granted TPS and that she is being treated for cataract in her left eye, no fact that could be considered "new" under 8 C.F.R. 103.5(a)(2) is furnished on motion to establish that the petitioner's removal from the United States would result in extreme hardship to herself or to her child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The motion is dismissed. The Associate Commissioner's order of November 30, 1999 is affirmed.