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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] EAC 97 207 51159 Office: Vermont Service Center Date: JUL 11 2003

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: 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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal and a motion to reopen were both dismissed by the Administrative Appeals Office (AAO). The case is again before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner is a native and citizen of Bosnia 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 director originally denied the petition on December 23, 1997, after determining that the petitioner failed to submit evidence, as had been requested on August 13, 1997, to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A) based on that relationship; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident spouse; (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (6) is a person of good moral character; (7) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (8) entered into the marriage to the citizen or lawful permanent resident in good faith.

The AAO dismissed the appeal on January 22, 1999, after noting that although counsel, on appeal, indicated that she was sending a brief and/or evidence within 30 days, no brief or additional evidence was received eleven months later.

The AAO dismissed the petitioner's motion to reopen on July 8, 2002, after noting that the motion was filed on April 12, 2002, more than three years after the appeal was dismissed. After reviewing the record and the petitioner's claims on motion, the AAO determined that the petitioner had not demonstrated that the delay was reasonable and was beyond her control, pursuant to 8 C.F.R. § 103.5(a)(1)(i).

The case is again before the AAO on a motion to reconsider. The petitioner reiterates her original argument that she was never

informed by her former attorney, Ms. [redacted] of the need for additional documents, information and/or evidence by the Service. She states that, in fact, the first time she became aware of the request for information was in June 2001, when she finally received all of her paperwork from Ms. [redacted] and only after she complained to the California Bar Association.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider a decision on an application or petition must, when filed, establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The record reflects that the director originally denied the petition after determining that the petitioner failed to submit additional evidence, as had been requested. The AAO dismissed the appeal on January 22, 1999, after noting that although counsel indicated that she was sending a brief and/or evidence within 30 days, no brief or additional evidence was received eleven months later. The AAO dismissed the petitioner's motion to reopen on July 8, 2002, after noting that the motion was filed on April 12, 2002, more than three years after the appeal was dismissed, and the petitioner had not demonstrated that the delay was reasonable and was beyond her control, pursuant to 8 C.F.R. § 103.5(a)(1)(i).

The petitioner, on motion, states that she finally received all her paperwork from Ms. [redacted] in June 2001. It is noted that the petitioner did not file her motion to reopen the AAO's decision until April 12, 2002, approximately ten months after she claimed she received all her documents from Ms. [redacted] As determined by the AAO in the decision dated July 8, 2002, the petitioner has not demonstrated that the delay was reasonable and was beyond her control.

Furthermore, the petitioner, in this case, has not established that the decisions of the director and the AAO were incorrect based on the evidence of record at the time of the initial decision, pursuant to 8 C.F.R. § 103.5(a)(3).

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.