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

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B9



FILE: [REDACTED]
EAC 03 160 51850

Office: VERMONT SERVICE CENTER

Date: FEB 02 2006

IN RE: Petitioner: [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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

Handwritten initials, possibly "R.W.", written in black ink.

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition and the petitioner timely filed an appeal. The Administrative Appeals Office (AAO) dismissed the appeal on June 1, 2005. On July 13, 2005, the petitioner filed a motion to reopen. The motion will be dismissed as untimely filed.

A motion to reopen a decision made by U.S. Citizenship and Immigration Services (CIS) must be filed within 30 days of the decision. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Failure to timely file a motion to reopen may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). In this case, the AAO dismissed the petitioner's appeal on June 1, 2005. Petitioner, through counsel, filed his motion to reopen on July 13, 2005, or 42 days after the AAO decision was issued. Counsel offers no explanation and submits no evidence that the delay in filing the motion was reasonable or due to circumstances beyond the petitioner's control. Indeed, the sole basis for the petitioner's motion is a psychological report that was previously submitted on appeal. Because the petitioner's motion was untimely filed, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.