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U.S. Citizenship
and Immigration
Services

199

[Redacted]

FEB 04 2005

FILE: [Redacted]
EAC 03 146 52379

Office: VERMONT SERVICE CENTER

Date:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition on March 17, 2004. The petitioner filed a notice of appeal on May 8, 2004. The director rejected the appeal as late, and treated it as a motion to reopen. The director affirmed its prior decision denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 of after 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 regulation at 8 C.F.R. § 103.2(a)(1) provides, in part:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter received by its submission.

The record indicates that the director issued the decision on July 14, 2004. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal. The instructions on the Form I-290B require the signature of the petitioner or the petitioner's representative; however, the petitioner submitted an unsigned notice of appeal to Citizenship and Immigration Services (CIS) on August 12, 2004. CIS rejected the appeal as improperly filed. The petitioner then submitted a signed notice of appeal on September 1, 2004, 48 days after the decision was issued. Accordingly, the appeal was untimely filed.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.