



U.S. Citizenship  
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FILE: [Redacted]  
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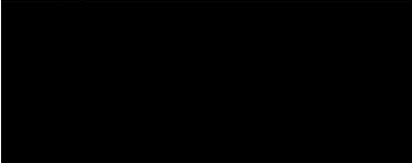
Office: VERMONT SERVICE CENTER

Date: NOV 03 2005

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.

*Marj Plunson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director denied the preference visa 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 record indicates that the director issued the decision on December 10, 2004. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal. The petitioner filed a Notice of Appeal on January 14, 2005, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Subsequent to the filing of the notice of appeal, new counsel for the petitioner submitted additional evidence directly to the AAO with a cover letter captioned "motion to reopen." Given that the appeal was pending as of the date of the filing of the motion to reopen, it too is untimely. The motion to reopen was received on September 29, 2005, more than 8 months of the date of the decision. A motion to reopen or reconsider must be filed within 30 days of the date of the decision. 8 C.F.R. § 103.5(a). Further, the official having jurisdiction to consider motions to reopen or reconsider is the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). As of the date of filing the motion, the Vermont Service Center alone had jurisdiction to consider motions to reopen or reconsider. Finally, the petitioner may not submit additional evidence for consideration on appeal after filing the appeal unless the petitioner received a 30-day extension for good cause from the AAO. 8 C.F.R. § 103.3(a)(2)(vii).

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

**ORDER:** The appeal is rejected.