

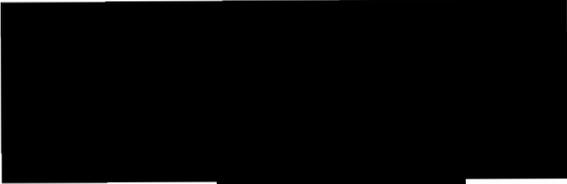


U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 20 2006

EAC 05 031 52992

IN RE:

Petitioner:



PETITION: 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)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii), 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 on September 6, 2005, finding that the petitioner did not have a qualifying marriage as the spouse of a lawful permanent resident of the United States. The petitioner, through counsel, attempted to file an appeal on the director's decision on October 7, 2005, but the filing was rejected for an improper fee. The fee was considered properly filed on October 28, 2005.¹

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 appeal within 30 days after the 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).

As noted above, the director received the appeal on October 28, 2005, 51 days after the decision was issued. Accordingly, the appeal was not 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.

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

ORDER: The appeal is rejected.

¹ The regulation at 8 C.F.R. § 103.2(a)(7) indicates that an application or petition that is stamped to show the time and date of actual receipt shall be regarded as properly filed when so stamped if it is signed and executed and contains the required filing fee. An application or petition that is not properly signed or is submitted with the wrong filing fee shall be rejected and will not retain the filing date.