

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

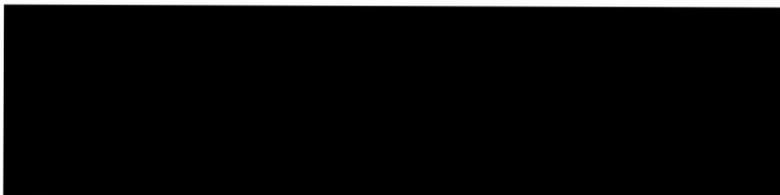
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

39

**PUBLIC COPY**

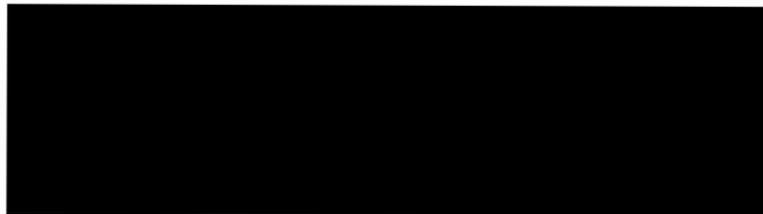


FILE: [Redacted]  
EAC 03 263 52391

Office: VERMONT SERVICE CENTER

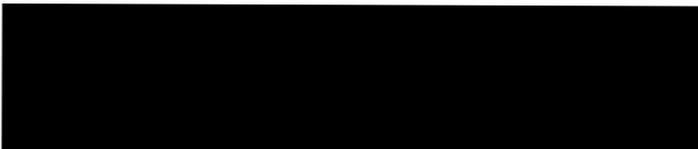
Date: NOV 15 2006

IN RE: Petitioner:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on February 7, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The appeal was filed on March 10, 2006, 31 days after the decision was rendered. The regulation at 8 C.F.R. § 205.2(d) provides that the affected party must “appeal the decision to revoke the approval within 15 days after the service of notice of the revocation.” If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). Although the director’s notice of revocation erroneously stated that the petitioner could file an appeal within 30 days (33 days if mailed), the director’s error does not supersede the pertinent regulations.

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.