



U.S. Citizenship
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FILE:

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Office: VERMONT SERVICE CENTER

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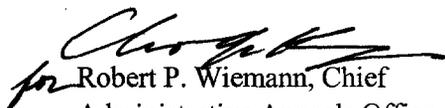
Petitioner:

PETITION: Petition for 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter for further action by the director.

The record indicates that the decision of the director was mailed to the petitioner via her counsel of record on July 26, 2006. A Form I-290B, Notice of Appeal to Administrative Appeals Unit (AAO), was received by the Vermont Service Center on August 22, 2006, 27 days after the decision was mailed. However, the director rejected the filing in a notice dated August 30, 2006 because the Form I-290B did not have the proper fee attached. The Vermont Service Center received the resubmitted Form I-290B with the proper fee on September 6, 2006, 42 days after the date of the director's denial.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. Title 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. Therefore, in this matter, CIS is required to reject the appeal as untimely filed. Although the petitioner originally attempted to submit the I-290B within 33 days of service of the decision, this submission included the incorrect filing fee. Therefore, as this filing did not retain a filing date, the actual filing date for the Form I-290B is September 6, 2006, 42 days after the decision was served by mail.

Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) which states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed," the AAO lacks the authority to consider an untimely appeal.

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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. However, because the director sent the Notice of Intent to Deny (NOID) to counsel at an incorrect address, the director must serve a newly dated notice of intent to deny to counsel's address of record.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the notice of intent to deny.