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



U.S. Citizenship
and Immigration
Services

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BK

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER
EAC 04 263 52202

Date: JAN 29 2007

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Battered Child Pursuant to Section 204(a)(1)(B)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

ON BEHALF OF PETITIONER:

[Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On June 29, 2006, the appeal was rejected as untimely filed pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i). The matter is now before the AAO on a motion to reconsider the June 29, 2006 rejection of the appeal. The motion will be rejected.

A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The June 29, 2006 notice rejecting the appeal informed counsel that all documents were returned to the Vermont Service Center and that any further inquiry had to be made with that office. Nonetheless, counsel submitted the motion to the AAO. On July 31, 2006, the AAO returned the motion to counsel. Counsel did not properly file the motion until September 15, 2006, which was 78 days after the date of the AAO's notice and over 17 months after the director's decision denying the petition. As the motion was untimely filed, it must be rejected.

The motion must also be rejected for lack of jurisdiction. On June 29, 2006, the AAO rejected the appeal as untimely filed and did not address the merits of the appeal. Accordingly, there is no decision on the part of the AAO that may be reopened in this proceeding. Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.