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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



FILE: [REDACTED]  
EAC 07 238 50597

Office: VERMONT SERVICE CENTER

Date: **JUL 24 2008**

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:

SELF-REPRESENTED

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 immigrant visa petition was denied by the Director, Vermont Service Center. The director approved a subsequent motion to reopen but affirmed his original decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on August 3, 2007, because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen. The petitioner subsequently filed a motion to reopen on Form I-290B. He clearly marked Box D in Part 2 of the Form I-290B to indicate that he was filing a “motion to reopen” rather than an appeal.<sup>1</sup> In addition, he wrote in Part 3 of the form that his “brief is attached with this motion.” Accordingly, in a decision dated March 11, 2008, the director properly considered the Form I-290B as a motion to reopen the prior unfavorable decision, granted the motion to reopen, and reaffirmed the denial of the petition.

On April 7, 2008, the petitioner filed an appeal. In the accompanying brief, the petitioner explained that he sought to have the Board of Immigration Appeals (BIA) “correct the procedural error of [the] center director. 8 CFR 103.(a)(2)(iv),” and to have the case “remanded . . . to Unites [sic] States Citizenship and Immigration Services ‘the Service’ for approval of his Form I-360.” However, the BIA does not have jurisdiction over Form I-360 appeals for aliens seeking classification under section 204(a)(1)(A)(iii) of the Act or general requests to “correct procedural errors” relating to the adjudication of such petitions. Instead, the authority to adjudicate these appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* 8 C.F.R. § 103.1(f)(3)(iii)(GG) (2002).

In both the August 3, 2007 and March 11, 2008 decisions, the director indicated that appellate jurisdiction for an appeal of the denied Form I-360 petition resides with the AAO and specifically noted that if the petitioner chose to file an appeal, it must be filed on the Form I-290B, Notice of Appeal or Motion. On April 7, 2008, the petitioner filed his appeal on Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by §103.7.

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<sup>1</sup> The petitioner would have had to check boxes A, B, or C in Part 2 of the Form I-290B in order to file an appeal.

As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

*Filing Appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part.

As the appeal was filed with the improper form, it is not considered properly filed and must be rejected.

**ORDER:** The appeal is rejected.