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**U.S. Citizenship
and Immigration
Services**

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BA

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 18 2005
EAC 03 241 57353

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:
[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 "D. King".

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 (AAO) on appeal. The appeal will be rejected as untimely filed.

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.

[Emphasis added.]

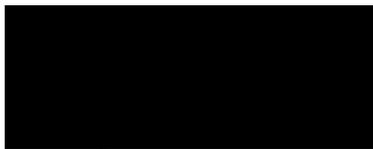
As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

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. *The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.*¹

[Emphasis added.]

The record indicates that the director issued the denial of the petition on January 20, 2005. The director specifically noted:

While your appeal will be decided by the [AAO] in Washington, DC, it should be sent to the Vermont Service Center with the required fee of \$110.00 at the following address:



[Emphasis in the original.]

Further, the Form I-290B contains the following instructions:

Filing. You must file your appeal with the [Citizenship and Immigration Services] office which made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date

¹ If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).

of the decision. Do not send your appeal directly to the [AAO]. Submit an original appeal only. Additional copies are not required.

[Emphasis added.]

Despite the clear instructions of the regulation, the director's denial notice, and the Form I-290B, the petitioner, through counsel, sent her original request for appeal to the district office in Cleveland, Ohio. The record reflects that the appeal was not received at the Vermont Service Center until May 20, 2005, four months after the petitioner was denied. Accordingly, the appeal was 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). In this instance, that official 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.