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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 19 2010**

[REDACTED]
EAC 06 112 50100
MSC 08 302 21964 (I-290B)

IN RE Petitioner:

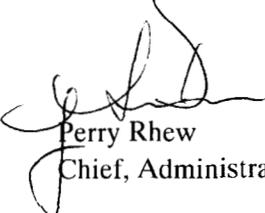
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“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.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

On November 1, 2007, the director denied the petition. The petitioner timely filed a Form I-290B, Notice of Appeal (EAC 08 045 52326). On February 18, 2009, the AAO issued its decision on the appeal.¹ Prior to the AAO’s decision on February 18, 2009, the petitioner, on July 28, 2008, filed a second Form I-290B (MSC 08 302 21964) that is the subject of this decision.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a United States Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

As the second Form I-290B was filed almost nine months after the director’s decision was issued, the appeal was filed untimely.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met its burden.

ORDER: The appeal is rejected. The petition is denied.

¹ The petitioner filed a third Form I-290B (EAC 09 126 50547) upon receipt of the AAO’s February 18, 2009 decision that has been adjudicated in a separately issued decision.