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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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 08 2010

IN RE: Petitioner: [REDACTED]

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:

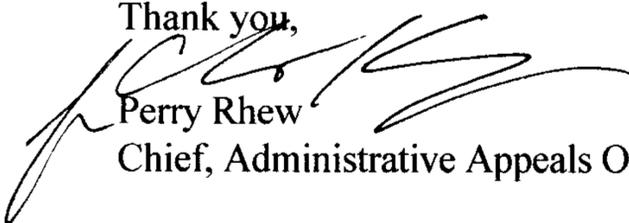
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner seeks immigrant classification under 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.

The director denied the petition pursuant to section 204(c) of the Act because the record showed that the petitioner had previously sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading the immigration laws. The director further determined that the petitioner had not established the requisite good-faith entry into her marriage, residence with her husband and his battery or extreme cruelty. The AAO concurred with the director's decision, and dismissed the appeal on November 20, 2007.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. 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. In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

As stated above, the record indicates that the AAO dismissed the appeal on November 20, 2007. According to the date stamp on the Form I-290B Notice of Appeal or Motion, it was received by USCIS on April 12, 2010, or more than two years after the decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that any motion to reconsider an action by USCIS must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before USCIS must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the control of the petitioner.

In his motion, counsel states that he did not file the motion within the applicable time period because neither he nor the petitioner was aware of the AAO's decision. According to counsel, he mailed a letter, dated November 2, 2006, to the Vermont Service Center to inform USCIS of his office's new address. Counsel states that he sent the letter to the Vermont Service Center because that office had not yet transferred the file to the AAO. Counsel states further that in a July 2008 response to the petitioner's Freedom of Information Act (FOIA) request, a copy of the AAO's November 20, 2007

appeal dismissal was not included. Counsel maintains that he only became aware of the appeal dismissal because it was attached as an exhibit to the Department of Homeland Security's opposition to the petitioner's motion for a continuance of her removal proceedings before the San Francisco Immigration Court. Counsel asserts that he filed the instant motion shortly after reviewing the exhibit.

Counsel's submission fails to establish that the delayed filing of the motion was reasonable and beyond the control of the petitioner. The November 2, 2006 letter that counsel submits as evidence of his notification to the Vermont Service Center of his business's new address is addressed to the immigration court in San Francisco. Although the Vermont Service Center is listed as a "cc" at the bottom of this letter, the petitioner's USCIS record does not contain a copy of the letter (other than the copy submitted by counsel with the motion), and USCIS systems do not indicate an updated address for counsel. Accordingly, as we sent our November 20, 2007 appeal decision to counsel at his last known address as required by 8 C.F.R. § 103.5a(a)(1), we do not excuse the late filing of the motion.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed. As the petitioner did not file the motion within the time provided for by the regulation, it must be dismissed.

ORDER: The motion is dismissed. The AAO's previous decision, dated November 20, 2007, is affirmed.