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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 20 2012** Office: VERMONT SERVICE CENTER

File:

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:



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, with a fee of \$630. 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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and a motion to reopen or reconsider the AAO's decision. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed. The previous decision will be affirmed and the petition will remain denied.

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.

On this second motion to reconsider, counsel asserts that the petitioner's delay in filing the first motion was due to extraordinary circumstances beyond the petitioner's control as Federal Express (FedEx), not counsel or the petitioner, was at fault for the late filing of motion. Counsel submits a copy of a FedEx Airbill and his September 2, 2011 affidavit declaring that he delivered the motion package to Federal Express on September 10, 2010 for overnight shipping scheduled to arrive on September 11, 2010, a Saturday, at the Vermont Service Center. The FedEx Airbill does not identify the contents of the package and the date on the Airbill is not clear. Counsel notes that after receiving the dismissal of the motion as untimely filed, he discovered that Federal Express had not shipped the motion package until September 17, 2010 causing the motion package to arrive on September 20, 2010, five days past the September 15, 2010 due date.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As previously observed, the first motion to reopen filed by the petitioner through her counsel was not properly filed until 38 days after the AAO's initial decision. Although counsel asserts that Federal Express did not timely ship the package, this alleged failure is not an extraordinary circumstance. The evidence presented in support of this motion to reconsider does not include pertinent precedent decisions establishing that the prior decision was incorrect based on the evidence of record at the time of the initial decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet

applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed and the previous decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO’s August 13, 2010 and August 9, 2011 decisions are affirmed and the petition remains denied.