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U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B9

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 10 2006

EAC 02 228 53705

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to "consolidate." The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The self-petitioner seeks classification as the battered spouse of a United States citizen 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).

The director denied the petition on October 14, 2003. On November 1, 2003, the petitioner filed a timely appeal to the AAO. The appeal was rejected by the AAO on May 17, 2004. More than one year later, on May 23, 2005, the petitioner filed the instant motion to "consolidate." The petitioner does not explain the nature or authority for her request to "consolidate."

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reconsider an action by [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner must be filed within 30 days of the decision the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before the period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and way beyond the control of the applicant or petitioner.

As cited in the regulation above, the only motions available to the petitioner are motions to reopen and motions to reconsider. Moreover, in order to be considered as properly filed, the affected party must file the motion within 30 days after 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).

In this instance, the motion was received by the AAO 372 days after the AAO's decision was issued. Accordingly, the motion was not timely filed. The petitioner's excuse that the delay in filing was due to "simple decency" and "female dignity," does not demonstrate that the delay was reasonable or beyond the petitioner's control.

**ORDER:** The motion is dismissed. The previous decision of the AAO will be affirmed and the petition will be denied.