U.S. Department of Homeland Security
20 Mass. Ave. N.W., Room 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 1 5 2008

EAC 06 186 51499

IN RE: Petitioner: [redacted]

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

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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 after 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). Further, the regulation at 8 C.F.R. § 103.3(a)(2)(i) states that the appeal must be filed with the office that made the previous adverse decision, in this case, the Vermont Service Center.

The record indicates that the director issued the decision on June 13, 2007. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal and that the appeal should be filed with the Vermont Service Center. The director also provided the petitioner with the exact address to where the appeal should be filed. On July 16, 2007, the petitioner submitted the instant appeal to the AAO rather than the Vermont Service Center. The AAO returned the appeal to the petitioner on that same date and again notified the petitioner of the proper location for filing the appeal. The record reflects that the appeal was not received by the Vermont Service Center until August 15, 2007, or 63 days after the decision was issued. 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.

An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 CIS policy.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. The petitioner has submitted no new facts and does not challenge the director's application of law or policy. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.