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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 031 51374

Office: VERMONT SERVICE CENTER

Date: OCT 14 2008

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Special 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:

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, Chief
Administrative Appeals Office

DISCUSSION: On February 6, 2006, the director of the Vermont Service Center denied the immigrant visa petition. On November 6, 2006, the Administrative Appeals Office (AAO) remanded the case back to the director. The director certified the new decision to the AAO on July 5, 2007. On March 26, 2008, the AAO affirmed the decision of the director and denied the petition. On April 30, 2008, a motion to reopen the AAO's decision was filed with the Vermont Service Center. The motion will be dismissed.

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

Any motion to reopen a proceeding before [Citizenship and Immigration Services (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 this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the petitioner attempted to file the instant motion directly with the AAO on April 23, 2008. It is noted that the attempt to file this motion directly with the AAO did not establish a receipt date of April 23, 2008. As clearly explained in the AAO's decision dated March 26, 2008, further inquiries regarding the matter should have been made to the Vermont Service Center. Moreover, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that this motion be filed at the office maintaining the record, i.e., the Vermont Service Center, for forwarding to the official having jurisdiction, i.e., the AAO. Therefore, the receipt date for the instant motion was the day it was received by the Vermont Service Center – April 30, 2008.

As indicated above, the instant motion was filed with the Vermont Service Center on April 30, 2008, or 35 days after the decision of the AAO. As the record is devoid of evidence establishing that the petitioner's failure to file the motion with the proper fee in a timely manner was reasonable and beyond its control, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In addition, the motion shall be dismissed for failing to meet two other applicable requirements. The regulations at 8 C.F.R. §§ 103.5(a)(1)(iii) and (a)(2) list the filing requirements for motions to reopen. Section 103.5(a)(1)(iii) states that a motion shall be filed on a Form I-290B. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this case, the motion was not filed on the Form I-290B and does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii), it must also be dismissed for these reasons.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.