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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 15 2009
EAC 06 203 50031

IN RE: Petitioner: [redacted]

PETITION: Petition for 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish that she married her husband in good faith and resided with him.

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 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). 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.

The record indicates that the director issued the decision on May 21, 2007. According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on June 27, 2007, or 37 days after the decision was issued. Accordingly, the appeal was untimely filed[1].

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 USCIS policy.

Review of the record indicates that the appeal does not meet the requirements of a motion. At Page #2, Part 2 of the instructions to the Form I-290B, it tells a petitioner how she must complete *Part 2, Information About the Appeal or Motion*. The instructions state that a petitioner must "clearly indicate" if she is filing an appeal or motion. At Part 2 on the Form I-290B, the petitioner checked boxes A, B, D and E, some of which relate to an appeal and some of which relate to a motion. Here, it is not clear whether the petitioner is filing an appeal or motion.

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[1] The petitioner initially sought to file the Form I-290B with the Administrative Appeals Office on June 22, 2007; however, the AAO rejected the filing because no appeals may be directly filed with the AAO. The proper venue for filing the Form I-290B was with the Vermont Service Center (VSC), the office that issued the denial letter. The petitioner did not file the Form I-290B with the VSC until June 27, 2007.

In addition, at Page #2, Part 3 of the instructions to the Form I-290B, it tells a petitioner how she must complete *Part 3, Basis for the Appeal or Motion*. The instructions state, "Your appeal or motion will be dismissed if you do not complete this part." Here, the petitioner did not make any statements in Part 3. She only submitted copies of documents that the director had already addressed in the denial letter.

As the appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen or reconsider, the appeal must be rejected.

ORDER: The appeal is rejected. The petition is denied.