

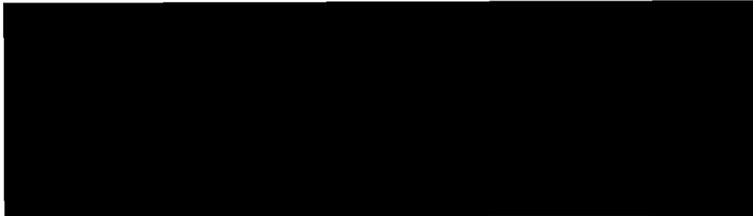
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



Bq.

FILE:



Office: VERMONT SERVICE CENTER

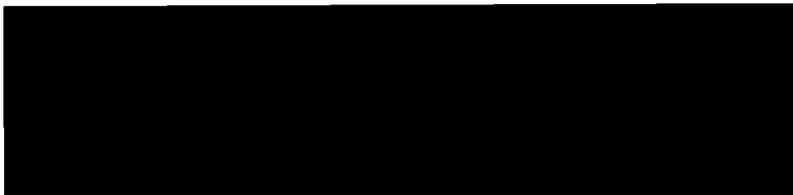
Date:
DEC 15 2010

IN RE:



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 service center director denied the immigrant visa petition and 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 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). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director denied the petition on June 10, 2010, and properly gave notice to the petitioner that she had 33 days during which to file an appeal. However, U.S. Citizenship and Immigration Services did not receive the petitioner's appeal until July 15, 2010, 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, it must be rejected.¹

ORDER: The appeal is rejected.

¹ Even if the petitioner's appeal had been timely filed, it would have been summarily dismissed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) requires the summary dismissal of any appeal where the party involved fails to specifically identify any erroneous conclusion of law or statement of fact for the appeal. Such is the case here: although counsel marked the box at section two of the Form I-290B, Notice of Appeal, to indicate that a brief and/or additional evidence would be sent within 30 days, to date, over six months later, the AAO has not received an additional brief and/or evidence. The petitioner's entire appeal, therefore, consists of one handwritten sentence on the Form I-290B. As the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact in the director's June 10, 2010 decision, her appeal, had it been filed timely, would have been summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).