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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



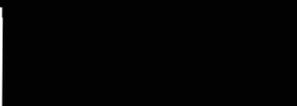
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

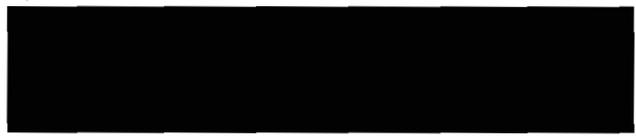
Date:

MAR 12 2010

EAC 04 131 53404

IN RE:

Petitioner:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director initially approved the immigrant visa petition. Upon review of the petition, the director issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she had complied with section 204(c) of the Act, 8 U.S.C. § 1154(c). The AAO affirmed the director's finding and found beyond the decision of the director that the petitioner had failed to establish that she is a person of good moral character.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion 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). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4)

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 motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

In this matter, the AAO mailed its decision on April 3, 2009. Counsel subsequently forwarded the Form I-290B, Notice of Appeal or Motion, to the New York District immigration office in error. An appeal/motion is not properly filed until the proper office, in this case the Vermont Service Center, receives it. The motion was received by the Vermont Service Center on September 1, 2009, 151 days after the decision was issued.

On motion, the petitioner has not presented persuasive evidence that the failure to file the motion within the 30-day time period should be excused. The petitioner does not assert that the delay in filing the motion was reasonable and beyond her control. Accordingly, the motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).



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As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.