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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

B9

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 13 2010

IN RE: [Redacted]

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:

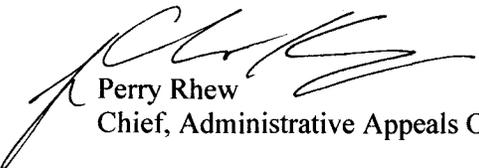
[Redacted]

**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 \$585. 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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. After again denying the petition, the director certified his decision to the AAO for review, and the AAO affirmed the director's denial. The AAO dismissed a subsequent motion as untimely filed. 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 petitioner filed the instant Form I-360 on June 17, 2004, and the director denied the petition on June 8, 2005. The petitioner appealed the director's decision to the AAO. In its April 14, 2006 decision, the AAO agreed with the director's analysis. However, although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).<sup>1</sup>

The director issued the requisite NOID on August 11, 2006 and the petitioner, through counsel, submitted a timely response. The director denied the petition on January 17, 2007, and certified his decision to the AAO for review. On March 7, 2007, the AAO affirmed the director's decision denying the petition.

Counsel submitted a motion on April 12, 2007, which the AAO dismissed as untimely filed on January 22, 2009. In its decision, the AAO noted that in order to properly file a motion to reopen or reconsider, 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 the decision that the motion seeks to reopen or reconsider and that, if the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

Counsel submitted the instant motion to reopen or reconsider on February 23, 2009. On motion, counsel states that the AAO's dismissal of the motion was improper. Counsel contends that although USCIS received the motion on April 12, 2007 it should not have been considered untimely because it was mailed on April 9, 2007, which was within 33 days of the AAO's March 7, 2007 decision.

Counsel is mistaken. The common law "mailbox rule" does not apply in USCIS proceedings: the regulation at 8 C.F.R. § 103.2(a)(7)(i) states that the date on which a petition or application is considered to be have been filed is not the date it was mailed, but the date of actual receipt by USCIS. Thus, pursuant to 8 C.F.R. § 103.2(a)(7)(i), because the motion was received by USCIS on April 12, 2007, that was the date on which it was filed. As April 12, 2007 was more than 33 days after the decision on which the decision that the motion sought to reopen or reconsider was issued,

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<sup>1</sup> On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition.



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the AAO's determination that it was untimely filed was proper. The AAO, therefore, affirms its March 12, 2007 decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The motion to reopen or reconsider is dismissed. The AAO's January 22, 2009 decision is affirmed. The petition remains denied.