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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

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 27 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 director of the Vermont Service Center denied the immigrant visa petition and granted a subsequent motion to reconsider. On motion, the director again denied the petition and certified his decision to the Administrative Appeals Office (AAO) for review. Although the AAO withdrew portions of the director's decision, the AAO affirmed the denial of the petition. The matter is now before the AAO on motion. The motion will be dismissed.

A motion to reopen or reconsider must be filed within 30 days of the adverse decision. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulations further require that a motion be submitted "to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." *Id.* at § 103.5(a)(1)(iii)(E). A motion that does not meet the applicable requirements shall be dismissed. *Id.* at § 103.5(a)(4).

On the cover page of its June 18, 2010 decision, the AAO notified the petitioner that the record had been returned to the Vermont Service Center and that any motion would have to be submitted to that office. Counsel nonetheless submitted the Form I-290B, Notice of Motion, to the AAO on July 19, 2010. Counsel did not properly file the motion with the Vermont Service Center until July 28, 2010, which was 40 days after the AAO's prior decision was issued. Accordingly, the motion was untimely filed and must be dismissed.

On the Form I-290B, counsel indicated in part two that he was filing a combined motion to reopen and motion to reconsider. The filing deadline may be excused for motions to reopen in the discretion of U.S. Citizenship and Immigration Services (USCIS) only "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). Counsel's submission does not meet the requirements of a motion to reopen, as he states no new facts and submits no supporting affidavits or other evidence. *See* 8 C.F.R. § 103.5(a)(2) (stating the requirements for a motion to reopen). Even if counsel's submission met the requirements for a motion to reopen, the record is absent any evidence that the delayed filing was reasonable and beyond the petitioner's control.

Counsel's submission does not meet the requirements for a motion to reopen. Counsel's motion to reconsider was untimely filed and consequently must be dismissed.

**ORDER:** The motion is dismissed. The June 18, 2010 decision of the Administrative Appeals Office is affirmed.