

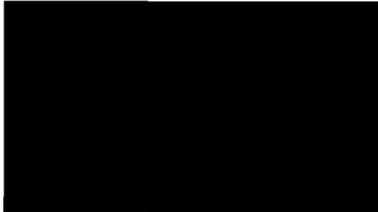
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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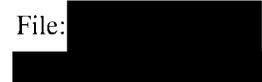
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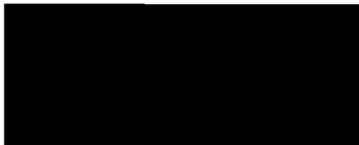
Petitioner:



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:

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 Director, [REDACTED], denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The previous decision will be affirmed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

On June 28, 2010, the director denied the petition after determining that the petitioner had failed to establish that he had resided with the United States citizen and had failed to establish that he had entered into the marriage in good faith. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, on July 16, 2010. Upon review of the record, including documentation submitted on appeal, the AAO withdrew the director's decision on the issue of the petitioner's joint residence with the United States citizen spouse and affirmed the director's decision on the issue of the petitioner's failure to establish that he had entered into the marriage in good faith.

On February 10, 2011, a Form I-290B with fee was received by the AAO, indicating that the petitioner was filing a motion to reopen the matter. On February 11, 2011, the AAO returned the motion filing to counsel, noting that the motion and fee must be sent to United States Citizenship and Immigration Services' (USCIS) office where the original application had been filed. On February 17, 2011, the motion with fee was received by the [REDACTED] and was forwarded to the AAO for adjudication.

In order to properly file a motion, an affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before USCIS. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this matter, the Form I-290B was not properly filed until February 17, 2011, 37 days subsequent to the AAO's January 11, 2011 decision. On motion to reopen, the petitioner does not assert and the record does not include evidence that the delay in filing the motion was reasonable and beyond the control of the petitioner. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be

dismissed.” Accordingly, the motion will be dismissed and the previous decision of the AAO will be affirmed.

**ORDER:** The motion is dismissed. The AAO’s January 11, 2011 decision is affirmed and the petition remains denied.