

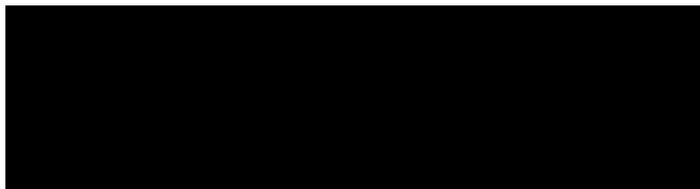
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: JUN 22 2011

Office: VERMONT SERVICE CENTER

File:



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:

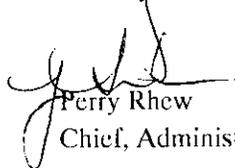


INSTRUCTIONS:

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, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The previous decision is affirmed and the petition remains 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.

On May 5, 2010, the director denied the petition after determining that the petitioner had failed to establish that: she had resided with the United States citizen; she had been subjected to battery and/or extreme cruelty by the United States citizen spouse; and she had entered into the marriage in good faith. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, on June 7, 2010, checking the box on the Form I-290B that he was filing an appeal and that he would submit a supplemental brief and/or evidence in 30 days.

Counsel for the petitioner submitted a document titled Memorandum In Support of Petitioner’s VAWA Motion to Reconsider, that was received by the Vermont Service Center on July 2, 2010.¹ The record includes a copy of the United States Postal Service’s tracking document confirming a document was delivered on July 2, 2010 to the Vermont Service Center. On July 26, 2010 counsel communicated with the Vermont Service Center VAWA hotline and noted that he was asking the Vermont Service Center to reconsider the VAWA petition and not the Form I-485, Application to Register Permanent Residence or Adjust Status, and noted that he had filed an “appeal brief” on July 1, 2010. The transcript of this communication was not included in the initial record submitted to the AAO.

On October 6, 2010, the AAO summarily dismissed the appeal filed on June 7, 2010 as the record did not include an appeal brief and counsel had not articulated a basis for the appeal on the Form I-290B. On November 8, 2010, a Form I-290B with fee was received by the AAO, with the box checked indicating that the petitioner was filing a motion to reconsider. On November 9, 2010, the AAO returned the Form I-290B, brief and supplemental documentation 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 November 16, 2010, the motion and fee were received by the Vermont Service Center and forwarded to the AAO for adjudication.

¹ The initial Form I-290B was identified as an appeal and when a brief is not submitted at the time of filing the Form I-290B, Notice of Appeal, it must be submitted directly to the AAO, not the service center or field office that made the adverse decision. See 8 C.F.R. § 103.3(a)(2)(viii) and the *Instructions* to the Form I-290B at page 2. If counsel was attempting to file a motion asking the Vermont Service Center to reconsider its denial, the AAO observes that the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal; however, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3).

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).

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In this matter, counsel for the petitioner submitted a Form I-290B, Notice of Appeal or Motion, checking the box indicating that he was filing a motion to reconsider and that a brief and/or additional evidence was attached. The Form I-290B was not properly filed until November 16, 2010, 41 days subsequent to the AAO's October 6, 2010 decision. 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 October 6, 2010 decision is affirmed and the petition remains denied.