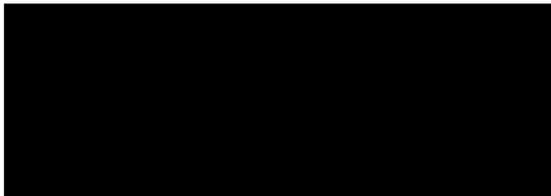




U.S. Citizenship
and Immigration
Services

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prevent disclosure of
invasion of personal privacy

PUBLIC COPY



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DATE: APR 03 2012 Office: VERMONT SERVICE CENTER

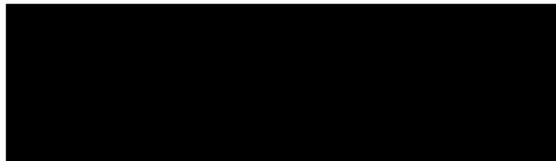
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IN RE: Petitioner: 

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:

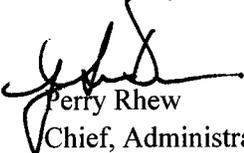


INSTRUCTIONS:

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 and the Administrative Appeals Office (AAO) rejected a subsequent appeal. The AAO granted a subsequent motion to reopen the matter and upon review dismissed the appeal. The matter is again before the AAO on a second motion to reopen. The motion will be dismissed. The previous decision is 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 her United States citizen spouse.

On September 9, 2003, the director denied the petition, determining that the petitioner had not established that she is a person of good moral character. The AAO rejected the subsequently filed appeal, determining the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, had been untimely filed. The director issued a decision on January 13, 2004, determining that the petitioner had not provided evidence sufficient to reopen the matter. The petitioner subsequently filed a second Form I-290B asserting that the initial appeal had not been filed untimely. On November 9, 2004, the AAO granted the motion to reopen but determined that the petitioner had not provided sufficient evidence establishing that she is a person of good moral character. On July 11, 2011, over six years subsequent to the AAO's last decision, counsel for the petitioner filed a motion to reopen and provided additional evidence regarding the petitioner's good moral character.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before United States Citizenship and Immigration Services (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. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

In this matter, the petitioner submitted a Form I-290B, Notice of Appeal or Motion, checking the box indicating that she was filing a motion to reopen and that a brief and/or additional evidence was attached. As the Form I-290B was not filed until July 11, 2011, more than six years subsequent to the AAO's November 9, 2004 decision, the motion must be dismissed. 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 November 9, 2004 decision is affirmed and the petition remains denied.