



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

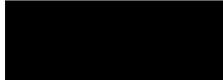
PUBLIC COPY

Bq



DATE: **APR 05 2012**

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:

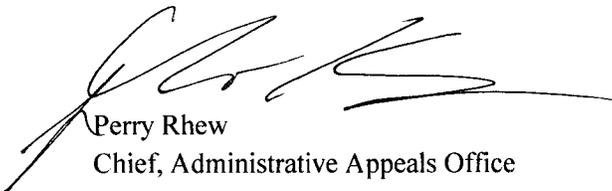
SELF-REPRESENTED

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 (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal, and affirmed its decision upon granting the petitioner’s motion to reopen. The matter is now again before the AAO on a motion to reopen and reconsider. 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). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. 8 C.F.R. § 103.8(b). Service by mail is complete upon mailing. *Id.* 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 July 25, 2011 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 within 30 days. The petitioner nonetheless submitted the Form I-290B, Notice of Motion, to the AAO on October 3, 2011. The petitioner did not properly file the motion with the Vermont Service Center until October 20, 2011, which was 87 days after the AAO’s prior decision was issued. Accordingly, the motion was untimely filed and must be dismissed.

On the Form I-290B, the petitioner 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). The petitioner’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 the petitioner’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.

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

ORDER: The motion is dismissed. The July 25, 2011 decision of the Administrative Appeals Office is affirmed.