

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: **DEC 24 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner [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)

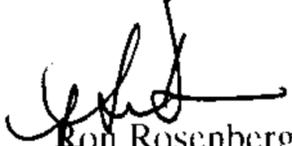
ON BEHALF OF PETITIONER:

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg

Acting 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. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The appeal will remain dismissed and the petition will remain denied.

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). There is no exception to the filing deadline for a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i).

The AAO dismissed the appeal on April 24, 2012. Counsel initially submitted a Form I-290B, Notice of Appeal or Motion that included a check with incorrect payee information and was consequently rejected per the regulation at 8 C.F.R. § 103.2(a)(7)(i). The Form I-290B Notice of Appeal or Motion with the correct payment was not received by USCIS until July 24, 2012, or 91 days after the decision was issued. As the motion was filed as a motion to reconsider, there is no exception to the filing deadline. 8 C.F.R. § 103.5(a)(1)(i). The motion to reconsider was untimely filed and accordingly must be dismissed.

ORDER: The motion is dismissed. The April 24, 2012 decision of the Administrative Appeals Office is affirmed.