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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: **FEB 16 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 denied the immigrant visa petition (Form I-360) and the Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the 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. § 103.5a(b). The failure to file a motion to reopen before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record reflects that, on May 16, 2011, the AAO summarily dismissed the appeal. The petitioner was given notice that she had 30 days to file a motion (33 days if mailed) and that any motion must be filed with the Vermont Service Center, not the AAO. The petitioner incorrectly submitted the appeal directly to the AAO. The AAO returned the motion to the petitioner and informed her that she had incorrectly submitted the motion with this office and that the motion must be submitted to the office which made the initial, unfavorable decision, in this case, the Vermont Service Center. The petitioner's motion was not received by the Vermont Service Center until June 3, 2011, or 45 days after the AAO's decision was issued. Accordingly, the motion was untimely filed.

On motion, the petitioner does not assert or demonstrate that the delay in filing the motion was reasonable and beyond her control. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.