

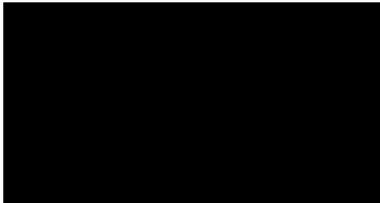
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: Office: VERMONT SERVICE CENTER

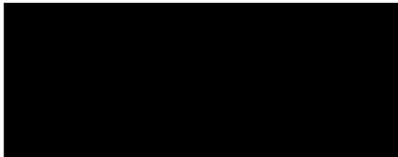
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FEB 22 2012

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) dismissed a subsequently filed appeal and a motion to reopen the AAO's decision. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed. The previous decision will be 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 a United States citizen.

On the second motion to reopen, counsel asserts that the petitioner's delay in filing the first motion to reopen was due to extraordinary circumstances beyond the petitioner's control as the error in submitting the motion was his error not the petitioner's error.

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 U.S. 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. 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). As previously observed, the first motion to reopen filed by the petitioner through his counsel was not properly filed until 37 days after the AAO's initial decision. Contrary to counsel's assertion, failure to properly and timely submit a Notice of Appeal or Motion (Form I-290B) is not an extraordinary circumstance. The Form I-290B instructions clearly set out the proper procedure for filing the Form I-290B. 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 January 11, 2011 and August 18, 2011 decisions are affirmed and the petition remains denied.