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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: **JUN 07 2012** OFFICE: VERMONT SERVICE CENTER



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)

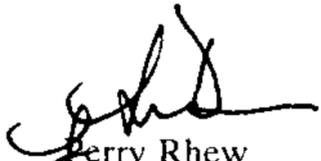
ON BEHALF OF PETITIONER:



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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) revoked his prior approval of the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks immigrant classification under 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.

The director revoked approval of the petition on October 6, 2011. An attorney filed an appeal and, although he submitted a properly executed Form G-28 below, he did not submit one on appeal. We sent a facsimile to the attorney on May 10, 2012 and requested that he submit a properly executed Form G-28 within seven days, but he did not respond. Accordingly, we deem the record complete and ready for adjudication.

The regulation at 8 C.F.R § 103.3(a)(2)(v) states, in pertinent part, the following:

Improperly filed appeal—

(A) *Appeal filed by person or entity not entitled to file it—*

* * *

(2) *Appeal by attorney or representative without proper Form G-28—*

- (i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitled that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

The regulation at 8 C.F.R § 103.3(a)(2)(v)(A)(2)(iii) provides further that an appeal may only be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Finally, the regulation at 8 C.F.R § 292.4(a) states, in pertinent part, that “a new [Form G-28] must be filed with an appeal filed with the [AAO].”

An appeal filed without a properly executed Form G-28 is considered an improperly filed appeal and it must be rejected. As the Form G-28 submitted below was executed more than one year before the appeal was filed it is neither “new” as required by 8 C.F.R § 292.4(a) nor “properly executed” as required by 8 C.F.R § 103.3(a)(2)(v)(A)(2)(i), and the appeal was not “properly filed as of its original filing date” pursuant to 8 C.F.R § 103.3(a)(2)(v)(A)(2)(iii). The appeal must therefore be rejected pursuant to 8 C.F.R §§ 103.3(a)(2)(v)(A)(2) and 292.4(a).

The appeal must also be rejected because it was not filed on a timely basis. In order to properly file an appeal from a decision revoking the approval of a petition, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party or the attorney or representative of record must file the appeal within 15 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 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).

The director revoked approval of the petition on October 6, 2011 and gave the petitioner proper notice that she had 18 days during which to file an appeal. However, the appeal was not filed until November 7, 2011, 32 days after the decision was issued. Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. As the appeal was untimely filed, it must be rejected for this additional reason.

The appeal was both improperly filed and untimely, and will be rejected for both reasons.

ORDER: The appeal is rejected.