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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: Office: VERMONT SERVICE CENTER

FILE: 

**JUN 21 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:

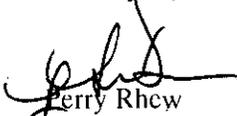


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a 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 motion 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 any motion to 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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO dismissed a subsequently filed motion to reopen and reconsider the matter as untimely filed and affirmed its decision on a second motion to reopen and reconsider. The matter is again before the AAO on a third motion to reopen and reconsider. The motion will be dismissed. The previous decisions 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 his United States citizen spouse.

On December 19, 2009, the director denied the petition, determining that the petitioner had not established: that he had a qualifying relationship with a U.S. citizen; that he had resided with the United States citizen spouse; that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; that he had entered into a qualifying relationship in good faith; and that he is a person of good moral character. On June 28, 2010, the AAO dismissed the subsequently filed appeal, concurring with the director’s decision. On March 31, 2011, the AAO dismissed the petitioner’s motion to reopen and reconsider the matter determining that the petitioner had not timely filed the motion.

On the second motion to reopen and reconsider, counsel for the petitioner asserted that the previous motion was timely filed and submitted a proof of delivery and confirmation notice issued by Federal Express showing that the previously submitted motion was received by the AAO at its Washington, DC address on July 30, 2010, within the 33-day time requirement. Counsel contended that the motion was received timely and thus should not have been dismissed. In its January 24, 2012 decision, the AAO made note of the Federal Express proof of delivery and confirmation notice from Federal Express showing the motion had been submitted to the AAO’s Washington DC office. The AAO also noted that the motion had been returned to counsel as it had not been properly filed. As the AAO previously determined, the Notice of Appeal or Motion (Form I-290B) was not filed at the correct location until 43 days subsequent to the AAO’s initial decision.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: “A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.”

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On this third motion, counsel does not submit any new facts or pertinent precedent decisions as a basis to reopen and reconsider the AAO's prior decision. Counsel, however, requests clarification as to the proper filing of a motion to reopen and reconsider. The regulation at 8 C.F.R. § 103.2(a)(1) provides that every benefit request must be executed and filed in accordance with the form instructions and with the correct fee. The instructions for the Form I-290B specifically state that the Form I-290B may not be filed directly with the Administrative Appeals Office (AAO) under any circumstances. The first motion was not filed at the appropriate address until August 10, 2010, 43 days subsequent to the required date.

As noted above, counsel does not present any new facts supported by affidavits as a basis to reopen this matter and does not present any reasons supported by pertinent precedent decisions establishing that the AAO's prior decisions were based on an incorrect application of law or Service policy. 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 decisions of the AAO will be affirmed.

**ORDER:** The motion is dismissed. The AAO's June 28, 2010 decision, March 31, 2011 decision, and January 24, 2012 decision are affirmed and the petition remains denied.