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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: **MAY 10 2012**

Office: VERMONT SERVICE CENTER



IN RE:



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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry 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 of the Vermont Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal as well as a motion to reconsider. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

A motion to reopen or reconsider must be filed within 30 days of the adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. 8 C.F.R. § 103.8(b). Service by mail is complete upon mailing. *Id.* 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). A motion that does not meet the applicable requirements shall be dismissed. *Id.* at § 103.5(a)(4).

On the cover page of its August 18, 2011 decision, the AAO notified the petitioner that the record had been returned to the Vermont Service Center and that any motion would have to be submitted to that office. Counsel nonetheless submitted the Form I-290B, Notice of Motion, to the AAO on September 19, 2011. Counsel did not properly file the motion with the Vermont Service Center until September 23, 2011, 36 days after the AAO's prior decision was issued. Accordingly, the motion was untimely filed and must be dismissed.

On the Form I-290B, counsel indicated in part two that he was filing a motion to reopen. The filing deadline may be excused for motions to reopen in the discretion of U.S. Citizenship and Immigration Services (USCIS) only "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). Counsel's submission does not meet the requirements of a motion to reopen, as he states no new facts and submits no supporting affidavits or other evidence. *See* 8 C.F.R. § 103.5(a)(2) (stating the requirements for a motion to reopen). Even if counsel's submission met the requirements for a motion to reopen, the record is absent any evidence that the delayed filing was reasonable and beyond the petitioner's control. The untimely filed motion must, therefore, be dismissed.

ORDER: The motion is dismissed. The December 16, 2010 and August 18, 2011 decisions of the Administrative Appeals Office are affirmed.