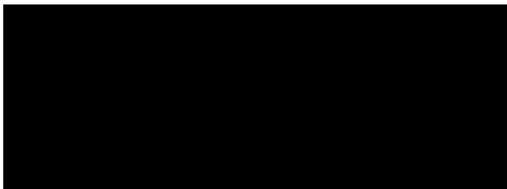




U.S. Citizenship
and Immigration
Services



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Date: **OCT 22 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:

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 Director, Vermont Service Center (“the director”), revoked approval of the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a third motion to reopen and reconsider. The motion will be rejected as untimely filed.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the complete 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. § 103.8(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). There is no exception to the filing deadline for a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i). A delay in filing a motion to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) only where the petitioner demonstrates that the delay was reasonable and beyond his or her control. *Id.*

The AAO affirmed its original dismissal of the appeal in its latest decision issued on March 28, 2012. Counsel initially submitted a Form I-290B, Motion to Reopen and Reconsider with the accompanying fee to an incorrect location that was consequently rejected per the regulation at 8 C.F.R. § 103.2(a)(6). The Form I-290B Motion to Reopen and Reconsider was not properly submitted to and received by USCIS until May 7, 2012, or 40 days after the decision was issued. Counsel has not demonstrated that the delayed filing of the motion to reopen was reasonable and beyond her or the petitioner’s control. Accordingly, both the motion to reopen and the motion to reconsider were untimely filed and must be rejected.

ORDER: The motion to reopen and reconsider is rejected.