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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

Date:

DEC 13 2013

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:

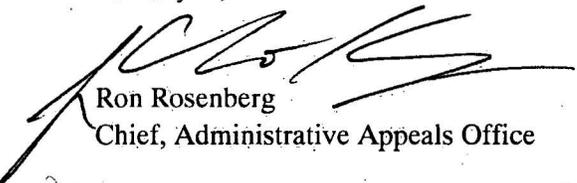
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. On certification of the director's subsequent, adverse decision, the AAO affirmed the decision of the director, and the petition remained denied. The AAO's decision is now before the AAO on appeal. The appeal will be rejected.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal 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). The AAO issued its decision on December 18, 2012. It is noted that the service center director properly gave notice to the petitioner that he had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. The petitioner's Form I-290B, Notice of Appeal, was mailed on January 21, 2013, and was not received by the service center until February 1, 2013, or 45 days after the director issued his decision. Accordingly, the appeal was untimely filed and must be rejected.

Even if the appeal was timely filed, it would be summarily dismissed. The director denied the petition because the petitioner failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage and because he consequently did not have a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (the Act) based on that relationship. The requisite qualifying relationship was not established because the petitioner's marriage with his wife, his claimed abuser, terminated on April 23, 2007, and the petitioner filed the Form I-360 on June 11, 2007, 49 days later.¹ On certification, the AAO affirmed the director's decision.

The petitioner now contends that in December 2012 his wife told him that she had an extramarital affair, and withdrew the Form I-130, Petition for Alien Relative, she filed on the petitioner's behalf, and stopped the petitioner from seeing their daughter. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). In this case, the petitioner reiterates the same claims of abuse that he previously made on appeal, and submits copies of evidence that he previously provided. He does not identify any specific, erroneous conclusion of law or statement of fact in the director's decision. Consequently, even if timely filed, the appeal would be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is rejected.

¹ An alien who is divorced may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). Because the petitioner did not establish his former wife's battery or extreme cruelty, he also failed to demonstrate any connection between his divorce and such battery or extreme cruelty.