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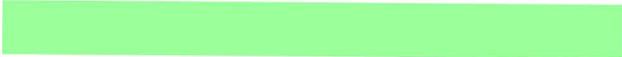
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

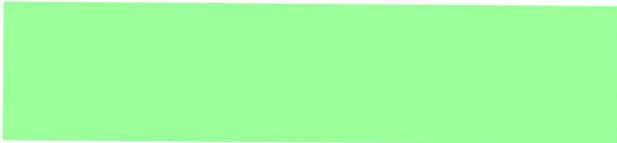


Date: **DEC 30 2013** Office: VERMONT SERVICE CENTER File: 

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:



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, (“the director”), revoked approval of the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision in response to the petitioner’s last three motions filed on this matter. The matter is again before the AAO on a fourth motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed 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 former spouse, a United States citizen.

The director revoked the approval of the instant Form I-360 petition on May 1, 2009, because the record showed that the petitioner had a prior marriage, which he had not disclosed, and he failed to provide evidence that it was terminated at the time of his marriage to M-E.<sup>1</sup> The director determined that the petitioner did not establish that he met any of the requirements of section 204(a)(1) of the Act. In its June 1, 2010 decision on appeal, the AAO withdrew the director's finding that the petitioner lacked good moral character but concurred with the director's determination that the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, and that he is eligible for immigrant classification based upon that relationship. The AAO also concurred with the director's determination that because the petitioner had not established that he was legally free to marry M-E-, he also had not established the remaining requirements of section 204(a)(1) of the Act. In its September 27, 2010 and March 28, 2012 decisions, the AAO affirmed its June 1, 2010 decision upon granting the petitioner’s motion to reopen and reconsider. On May 7, 2012, the petitioner’s former counsel improperly filed a Form I-290B, Motion to Reopen and Reconsider with the accompanying fee to an incorrect location that was consequently rejected as untimely per the regulation at 8 C.F.R. § 103.2(a)(6).

The petitioner submits the instant Form I-290B Motion to Reopen and Reconsider with his current counsel claiming that ineffective assistance of counsel by his former attorney for failing to properly file his previous Form I-290B. 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 criteria set out in *Matter of Lozada* requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned

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<sup>1</sup> Name withheld to protect the individual’s identity.

be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner submits evidence showing that he meets the requirements set forth above and accordingly demonstrated that the delayed filing of the third motion to reopen and reconsider was reasonable and beyond the petitioner's control. Accordingly, the AAO shall consider the evidence submitted with the third and fourth motions.

Counsel submits an affidavit from the petitioner, evidence in support of his good moral character and copies of previously submitted documents. In his brief, counsel asserts that the petitioner has presented "substantial documentary and evidentiary materials to support his claim that he is a person of good moral character and that his previous marriage to [M-E-] was a bona fide and qualifying relationship." However, the AAO's June 1, 2010 decision withdrew the director's finding that the petitioner lacked good moral character and determined that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen and was eligible for immediate relative classification based upon that relationship. In its subsequent March 28, 2012 decision, the AAO determined that the petitioner's conflicting accounts of how he applied for a nonimmigrant visa to the United States was significant and detracted from the credibility of his claims. In his affidavit on the instant motion, the petitioner repeats his statements below and does not state any new facts or provide additional evidence to reconcile the discrepancies. Further, counsel does not cite any precedent decisions or otherwise establish that the agency's prior decisions were based on an incorrect application of the relevant law or agency policy. Consequently, the evidence comprising the motion fails to demonstrate that the director and the AAO erred in determining that the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

**ORDER:** The June 1, 2010, September 27, 2010, and March 28, 2012 decisions of the Administrative Appeals Office are affirmed. The appeal remains dismissed and the petitioner's approval remains revoked.